THE EROSION OF LAW ENFORCEMENT INTELLIGENCE AND ITS IMPACT ON THE PUBLIC SECURITY

HEARINGS

BEFORE THE

SUBCOMMITTEE ON CRIMINAL LAWS AND PROCEDURES

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

PART 4

FEBRUARY 9, 1978

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THE EROSION OF LAW ENFORCEMENT INTELLIGENCE AND ITS IMPACT ON THE PUBLIC SECURITY

THURSDAY, FEBRUARY 9, 1978

U.S. SENATE,
SUBCOMMITTEE ON CRIMINAL LAWS AND PROCEDURES
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10:30 a.m., in room 457, Russell Senate Office Building, Senator Strom Thurmond presiding.

Staff present: Richard Schultz, counsel; Robert J. Short, investigator; David Martin, analyst; and A. L. Tarabochia, investigator.

Senator THURMOND. The subcommittee will come to order.

The subcommittee meets today in continuation of its inquiry concerning the erosion of law enforcement intelligence gathering capabilities and its effect on the public.

Previous witnesses before the subcommittee have identified four general reasons for the continually increasing erosion of law enforcement intelligence information—the capability to gather and use needed information.

The reasons identified are as follows: First, the impact of the Freedom of Information Act; second, the impact of the Privacy Act; third, the restrictive legislation adopted at the State level; and four, the generally hostile attitude of the press toward intelligence gathering.

We are pleased to have with us this morning the Honorable Alan K. Campbell, Chairman of the Civil Service Commission.

As we know, by Executive Order 10450 issued by President Eisenhower entitled "Security Requirements for Government Employment," the heads of departments and agencies were tasked with the responsibility for establishing and maintaining effective programs to insure that the employment and retention in employment of civilians is "clearly consistent with the interests of the National security."

The Civil Service Commission, among other responsibilities, was assigned the task of making a continuing study of the manner in which E.O. 10450 was being implemented for the purpose of determining, first, deficiencies in the departments' and agencies' security programs established under this order which are inconsistent with the interests of, or directly or indirectly weaken, the national security; second, tendencies in such programs to deny to individual employees fair, impartial, and equitable treatment at the hand of the Government, or rights under the Constitution and laws of the United States of this order.

It is a pleasure to welcome Chairman Campbell to our hearing today. We are looking forward to hearing your views about the erosion of intelligence information and any impact this may have had on your Service in carrying out its assigned responsibilities.

Mr. Campbell, you may proceed with your statement.

STATEMENT OF ALAN K. CAMPBELL, CHAIRMAN, U.S. CIVIL SERVICE COMMISSION, ACCOMPANIED BY ROBERT J. DRUMMOND, JR., DIRECTOR, BUREAU OF PERSONNEL INVESTIGATIONS

Mr. CAMPBELL. Thank you very much, Mr. Chairman.

We appreciate this opportunity to present our views on the subject of the erosion of law enforcement intelligence capabilities.

Appearing with me today is Robert J. Drummond, Jr., Director of our Bureau of Personnel Investigations.

I have a very brief prepared statement which I should like to read into the record, after which Mr. Drummond and I shall attempt to answer any questions you may have.

Let me preface my remarks by pointing out that the Civil Service Commission is not an intelligence gathering agency in the usual sense.

The Bureau of Personnel Investigations collects and maintains information about individuals who are Federal employees, applicants for Federal employment, or contractor employees requiring security clearances.

This information is maintained in individual investigative files and pertains to that particular individual.

During the conduct of our investigations, we check the files of other Federal investigative agencies, some of which do engage in intelligence gathering activities. These agencies, in turn check our files. We also check the files of State and local criminal agencies.

We do not use paid informants ourselves, but some of the information obtained from the above sources may have come from such informants.

We are not in a position to assess the impact that the Freedom of Information and Privacy Acts have had on law enforcement intelligence gathering activities since we are, or have been, users rather than collectors of such information. The possible exception to this statement pertains to the activities of our Security Research Section which I will comment on in item 4.

I will now turn my attention to the specific areas referred to in your letter of October 6 inviting me to testify.

Item 1 refers to the degree of cooperation received from local, State, and Federal agencies before and since enactment of the Freedom of Information and Privacy Acts.

Our investigators are instructed to inform each source of information that the information and the identity of the person and/or organization will be furnished to the person being investigated upon his or her request.

Naturally, this notice has a chilling effect on the desire to cooperate, and some individuals and private employers refuse to cooperate under those conditions, but the majority still provide us with infor-

mation, even though they may express some concern over the condition.

Few request a pledge of confidence—probably because most are not aware that is can be granted. The investigator may grant confidentiality only if it is requested by the source, or if, in the discretion of the investigator, he or she feels that the granting of confidentiality is necessary to secure pertinent information.

When granted, confidentiality extends only to the identity of the witness and information which would reveal identity. Other information provided cannot be withheld from disclosure.

The Law Enforcement Assistance Administration regulations—not Privacy—are cited most frequently by State and local law enforcement agencies which refuse to release criminal justice information. Such refusals have become commonplace in recent years.

Also, many States have enacted legislation which provides for the dissemination of criminal justice information only to other criminal law enforcement agencies.

We find that most law enforcement officials personally would like to cooperate with us, but because of confusion resulting from different interpretations of LEAA regulations, Privacy Act provisions, and State laws, they play it safe by declining to release information.

Item 2 relates to difficulties encountered in conducting personnel investigations because of restrictions imposed by the Freedom of Information and Privacy Acts.

The two provisions of the Privacy Act which most affect the Commission's investigative program are (1) access to the file by the subject; and (2) the prohibition against maintaining information with respect to how a person exercises rights guaranteed by the first amendment.

While our reports of investigation were not released to individuals prior to the 1974 amendments to the Freedom of Information Act, the Commission, in cases under its jurisdiction, has always had a policy of advising an applicant or employee of the nature of any potentially disqualifying information, and considering his or her response before making an adverse employment or retention decision.

Allowing access by the subject has had a positive and negative effect.

It enhances the relevancy of the information in the report—the witness and the investigator have a stronger motivation toward dealing with facts rather than speculations and opinions when both know the subject can see what has been reported. I would say that this has provided a beneficial effect, both to the individual and Government.

On the other hand, this same knowledge would contribute to a person's reluctance to provide derogatory information, especially if the person has reason to fear possible retaliation.

If information is withheld which would disqualify the individual for employment or for a security clearance, the Government, obviously in this case, is vulnerable to injury.

The most troublesome provision of the Privacy Act is the one dealing with first amendment rights.

The Commission interprets section (e)(7) as a prohibition against reporting any organizational affiliations unless the subject of investigation, in connection with such membership, engages in or advocates the denial of a person's rights guaranteed by the Constitution, the overthrow of legally constituted units of Government by violent means, or the commission of crimes against persons or property.

Under this interpretation, we would not maintain information with respect to mere membership in any organization, nor would we maintain information with respect to organizational-type activities unless one of the above criteria were met. For example, engaging in peaceful protests would not be a reportable activity.

Item 3 refers to processing requests for information under the Freedom of Information and Privacy Acts.

Attached to copies of this statement, which have been furnished to you, are responses to specific questions submitted to us by letter of November 8. Unless otherwise indicated, the information furnished pertains to the Bureau of Personnel Investigations only.

Item 4 concerns the impact of privacy legislation on the Commission's security research activities.

In the early days of the Commission's investigative program, in the interest of expediency, investigators began keeping leads type information obtained during the course of their investigations for reference in subsequent investigations to eliminate duplication of effort. Investigators would also share this information with colleagues. Most of this information pertained to affiliation with organizations which were considered by the investigator to have aims inimical to the interest of the United States.

Eventually, about 1942, maintenance of these files was formalized, and a special unit was set up to collect, analyze, and disseminate the information. Information was collected from newspapers, periodicals, congressional hearings, nominating petitions, and reports of investigation.

An index card containing the name of the individual and a brief description of his or her activities was prepared which provided a lead to a file containing detailed information about the organization, event, or publication. During the course of an investigation, the subject's name was checked against this index.

This index was eliminated by action of the Commission pursuant to section (e)(7) of the Privacy Act.

Although the organizational files remain at the present, the Commission has notified GAO that it will adopt the GAO recommendation to dispose of these files also.

In conclusion, I would like to go on record with this assessment of the Privacy Act as it relates to the Government's personnel security program.

I view the act as an attempt to achieve a balance between the individual's right to privacy and the Government's responsibility—as perceived by Government officials to preserve our society. Only time will tell whether the restrictions placed on the executive branch by the act have, in fact, created an imbalance.

Thank you.

Senator THURMOND. Thank you, Mr. Campbell. Without objection, your documents will be inserted in the record at this point.

[The material referred to follows:]

QUESTIONS SUBMITTED TO MR. CAMPBELL

Question. What is the average time to process a routine Freedom of Information Act or Privacy Act request in which a file is found on the requestor and all information needed is available to identify him/her?

Answer. The average time required to process routine FOI/Privacy requests is approximately 60 days.

Question. How long is it taking to process a request in which no file is found?

Answer. Except in rare instances we are able to determine whether we have a file in 3 or 4 days. If we have no file we so notify the requestor in 10 days.

Question. Will you ever be able to process requests within the 10 days as required by the Act? That is, for those requests in which a file is found.

Answer. The Freedom of Information Act and regulations promulgated subsequent to enactment of the Privacy Act require that the requestor be notified within 10 work days whether we have a file and if so, whether we will grant access. We cannot envision that we would ever be able to process requests (grant access) within 10 days. (The law does not require this.)

Question. What do you consider a reasonable time frame?

Answer. We consider 60 days to be a reasonable time frame.

Question. What is your estimated costs for FY 77 and projections for FY 78, 79, and 80? What costs are you taking into account?

Answer. For FY 1977 we estimated expenditures of $236,000 for processing FOP/P requests for access to investigative files. We actually spent $247,800.

For FY 1978 we estimated the need for $451,000 which would allow for deletion of First Amendment information in existing files before they were released to other agencies. Current projection shows expenditure at a $300,000 rate. If this rate continues we will have to adjust our estimates downward for FY 1980 ($550,000).

Estimated costs for the entire Civil Service Commission for processing FOI/P work are:

Fiscal year:	
1977	$575, 000
1978	790, 000
1979	850, 000
1980	850, 000

The above figures include all identifiable cost—direct labor, administration, personnel benefits, rent, supplies, etc.

Question. Besides the personnel you have within the Freedom of Information and Privacy Act Branch, how many other employees in other offices work on Freedom of Information and Privacy Act matters and are their costs included in the Freedom of Information and Privacy Act Branch cost estimates?

Answer. We currently have 14 employees directly involved in processing requests for access to investigative files and deleting First Amendment information from files being released to other agencies. There are other Commission employees and managers who become involved in handling some of these cass but we have no means for determining the actual number. This involvement is usually on requests for amendment and cases under litigation. Cost of this involvement is included in the figures shown above.

Question. What is your projected level of activity over the next 3 years and do you foresee that your present complement will be enough to meet the number of requests?

Answer. We do not anticipate a further increase in FOI/P activity during the next 3 years. The number of requests for access to investigative files appears to have peaked at an average of about 30 per week. The average was 23 in FY 1976.

Question. Could you give a percentage breakdown of the type of requestor that use the Freedom of Information and Privacy Act that would fall in the following categories: (A) Criminals, (B) aliens, (C) curious citizens, (D) media, (E) researchers, and (F) Federal Government applicants.

At the same time, could you please break down the type of files requested into: (A) Security, (B) criminal, (C) civil matters, and (D) applicant BI, etc.

Answer. We have no way of determining the reason a person requests an investigative file nor into what category the requestor falls. Of the 6 categories listed in this question practically all would be Federal Government applicants (or employees). Many of these would also fall in the "Curious Citizen" category. We have had few—probably 3 or 4—requests from researchers.

The type of files requested are investigations on individuals.

Question. What benefits do you think have been derived from the Freedom of Information Act and the Privacy Act?

Answer. The only benefit that we can attribute to FOI/P is the probability that less irrelevant information now appears in reports of investigation. It is possible that subjects of investigation have "benefited" if the statutes have deterred witnesses (sources of information) from providing information which would have prevented the employment of the person. In evaluating the effect of FOI/P has had on the government's suitability/security program, we are faced with the dilemma of not knowing whether information has been withheld. However, even before FOI/P, we did not know that.

Question. What negative impact, if any, have the Freedom of Information Act and the Privacy Act had on the primary mission of the Civil Service Commission?

Answer. The primary mission of the Commission's Bureau of Personnel Investigations is to conduct personnel investigations which cover a persons past conduct, behavior and activities in sufficient detail to enable an adjudicator to make an employment/security determination. Theoretically, the more information the adjudicator has the more valid his decision will be, so long as the information is relevant. The problem occurs when the report contains information which should not be relevant to a determination but may affect the decision. Furthermore, we find that what was thought to be relevant when the information was compiled may not be relevant today. Prior to Privacy, it was pretty much left up to the adjudicator to determine what was relevant. The investigator's prime concern was with the accuracy of the information, except that Commission investigators have always been prohibited from reporting certain irrelevant information such as race, religion, politics and union membership. Now, since Privacy, the investigator must also concern himself with relevancy concerning matters which might be considered relevant in one case, but not in another.

Question. How many requests have you had in which you had no file or record?

Answer. Since January 1975 we have received requests from 785 persons on whom we had no record.

Question. How many requests have you had in which you have had to close them administratively because the requestor does not provide the required information (i.e., notarized signature, date of birth, Social Security number, etc.)?

How long do you wait before closing them?

Answer. Our requirements for a file search are: full name, signature, date and place of birth, and Social Security number. We do not close a request if the necessary information is not furnished. We write to the requestor asking for the information necessary to complete the search. We have been able to respond to 100% of the requests when sufficient identifying information has been furnished.

Question. How much has the Civil Service Commission collected in fees since the Freedom of Information and Privacy Act cases began to be processed?

Answer. During fiscal years 1975, 1976 and 1977, CSC collected a total of $5,761 in FOI/Privacy fees. We no longer charge individuals for copies of investigative reports. We found that it was not cost effective to process these small fees.

Question. How many cases do you have in litigation?

What are the primary reasons for these litigated cases?

Answer. We (total Commission) have 27 FOI/Privacy cases under litigation. These cases have resulted from our refusal to comply with particular requests, in whole or in part, by taking exemptions provided in the Acts.

Breakdown:

7—Refusal to amend record.

4—Refusal to release agency evaluation reports.

3—Refusal to grant total access.
2—Withholding third party information.
2—Withholding financial information.
2—Claims that "all records" were not released.
7—Miscellaneous (Medical Records, EEO records, rating schedules, etc.).

Question. How many litigated cases have achieved final action and how many has the Government won?

Answer: Disposition or Status of 27 cases:
9—Won by Government.
4—Lost by Government.
2—Mixed (partially won, partially lost).
12—Pending.

Question. What plans do you have for the future to reduce the costs and problems with processing Freedom of Information and Privacy Act requests (i.e., file automation, file destruction, use of non-agent personnel)?

Answer. The only foreseeable cost reduction in processing FOI/Privacy requests will occur in 1980 when our destruction schedule allows for destruction of investigative files over 20 years of age. We estimate that 2 million files will be eligible for destruction at that time. We plan to dispose of our organizational files immediately upon release from Senate Resolution 21 (January 27, 1975).

Question. What procedure was followed by the Civil Service Commission as of 10 years ago in processing applicants for Federal employment under the requirements of Executive Order 10450?

Answer. During the past 10 years there has been little change in the manner in which investigations are processed under E.O. 10450. We have made some technical processing changes and have reduced coverage in certain areas. These changes are discussed below.

Question. What changes, if any, have been made in the manner of processing applications for Federal employment under the requirements of Executive Order 10450? If changes in the manner of processing applicants for Federal employment have been made, would you spell out the nature of each change and the authority on which the change was made? And would you indicate whether, and to what degree, these changes resulted from the enactment of the Freedom of Information Act and Privacy Act and other restrictions on the gathering and maintenance of intelligence?

Answer. E. O. 10450 provides for 2 types of investigations—a National Agency Check and Inquiry (NACI) for nonsensitive positions and a full field investigation for sensitive positions.

NACI

The order does not specify the "national agencies" to be checked (except for the fingerprint files of the FBI) but its predecessor, E. O. 9835, listed the agencies to be checked and the Commission continued searching records of those agencies under E. O. 10450 authority. These were CSC's Security Investigations Index and Security Research files, the FBI's fingerprint files and subversive files, the DOD's investigative files and military personnel records as appropriate, Immigration and Naturalization files as appropriate, Coast Guard Intelligence files as appropriate, and the House un-American Activities Committee (later changed to House Internal Security Committee) files.

We no longer check: CSC's Security Research files—the index to these files was eliminated pursuant to section (e)(7) of the Privacy Act. The House Internal Security Committee files—no longer available. All other files listed above are still checked as appropriate.

The Order (10450) prescribed written inquiries to "appropriate local law enforcement agencies, former employers and supervisors, references, and schools attended".

The Order does not define scope of coverage with respect to time and, by administrative action, the Commission has reduced the number of years covered by written inquiries. This has been done for practical as well as budgetary reasons. We currently voucher the prescribed sources to cover activities during the most recent 5 year period. Some local law enforcement agencies refuse to respond citing the Privacy Act, LEAA Regulations, state or local statutes or lack of resources. An ever growing number of employers refuse to respond because of the disclosure provisions of the Privacy Act. A large and growing number of colleges and universities refuse to respond citing either

the Privacy Act or the Education Act as the reason. Most individuals still respond to vouchers.

FULL FIELD

In full field investigations, we schedule the same national agency checks outlined above. Instead of the written inquiry portion of the NACI, investigators make personal contact with the sources (witnesses) and obtain information by personal interview. These interviews are held with employers, supervisors, fellow employees, personal acquaintances, neighbors, references, teachers, fellow students, and any other knowledgeable person. Personal contact is also made with local law enforcement agencies.

As in the case with the NACI, the Commission has administratively reduced the years of coverage. In 1960, personal investigative coverage was reduced to the most recent 15 years, or back to the 18th birthday, whichever period is shorter. In recent years we have effectively reduced the initial scope to the most recent 5 years, extending beyond that period only as warranted by facts developed. The underlying reasons were (1) cost consideration—a full field investigation currently costs $850, up from $225 in 1952; and (2) surveys which showed that information pertaining to conduct occurring prior to the most recent 5 years was rarely actionable.

Question. Does the Civil Service Commission continue on a routine basis to request background information about applicants for Federal employment from local law enforcement authorities and Federal law enforcement authorities?

Answer. As indicated above we do still check local law enforcement records in all NACI and full field investigations. We have reduced the span (time) of coverage. We obtain local law enforcement coverage at locations where the subject of investigation has worked, lived or attended school during the most recent 5 years. FBI fingerprint files, which are not limited by time (years), are checked in all full field and NACI cases.

Question. The subcommittee has heard from many sources that local law enforcement authorities frequently refuse to send information to offices of the Federal Government because of their fear of disclosure under the Privacy Act and Freedom of Information Act. Has the Civil Service Commission been affected by this?

Answer. As indicated above we have experienced reluctance—and, in some cases, outright refusal—on the part of local law enforcement agencies to supply criminal justice information because of Privacy. CSC and employing agencies have been affected to the extent that a lack of pertinent information pertaining to arrests or convictions could have an impact on employment decisions.

Question. Would you provide us with statistics over the past 5 years showing what percentage of your requests for background information addressed to local and Federal law enforcement authorities have been honored—and, conversely, what percentage of your requests do not result in a substantive reply?

Answer. We have not kept records on the percentage of local law enforcement agencies which refuse to search records for us. We know that the number has grown since enactment of the Privacy Act, but most local agencies still cooperate with us. Because of our personal relationships with local authorities, we still have access to most police agencies in personally investigated (full field and suitability) cases. NACI investigations, which are conducted by correspondence, are basically a screening process for nonsensitive and noncritical-sensitive positions. It is in these cases that we experience reluctance on the part of local law enforcement agencies to furnish criminal justice information. We are just now concluding a survey through our regional offices which will pinpoint specific problem areas.

Question. Has the Civil Service Commission's own ability to maintain records and conduct research with a view to implementing Executive Order 10450 been adversely affected by the requirements of the Privacy Act and Freedom of Information Act?

Answer. The Privacy Act has impacted on our ability to maintain records. As indicated in the Chairman's testimony the Privacy Act prohibits us from

maintaining records with respect to how an individual exercises rights guaranteed by the First Amendment. The elimination of the index to these records prevents access to the reference material.

Question. What records are maintained today, and how do these compare with the records kept as of 10 years ago?

Answer. Except for the elimination of the Security Research and Analysis index discussed above, there is no difference in the records that are maintained now and those that were maintained 10 years ago. We have agreed, however, to a recent GAO recommendation to discontinue the maintenance of organizational information.

We still maintain our Security Investigations Index. This index has been purged of records of individuals with respect to whom no investigative or adjudicative action has taken place within the past 20 years. Prior to the Privacy Act, we had not purged any cards from this index since we were not regulated by the timeliness provision contained in the Privacy Act.

Question. Could you provide the subcommittee with organizational charts for the Bureau of Personnel Investigation, today and as to 10 years ago? If there have been changes, to what extent are they the result of the Freedom of Information Act and the Privacy Act and other restrictions on the maintenance of intelligence?

Answer. Attached are organizational charts of BPI today and 10 years ago. Organizational changes have resulted from functional and cost considerations rather than from FOI/P requirements. We have, of course, established an FOI/P Section which handles the release of investigative records required by the FOI and Privacy Acts.

Question. Could you provide us with statistics for the past 10 years, setting forth, on an annual basis, (1) The number of applicants for Federal employment, (2) The percentage of these applicants turned down because they fail to live up to the requirements of Executive Order 10450? (a) On grounds of suitability (b) On grounds of loyalty?

Answer. It would be statistically meaningless to calculate the number of persons who have applied for Federal employment during the past 10 years. Millions of persons apply every year. The Federal Government has hired replacements in approximately 300,000 positions each year in the past 10 years. These 300,000 people per year have been appointed, for the most part, from CSC registers of applicants who have competed and qualified for Federal work. Some who have applied have been disqualified for suitability reasons. A few have been removed following appointment because of failure to meet suitability standards.

Question. Could you provide us with statistics for the past 10 years showing, on an annual basis, the number of employees suspended or dismissed on grounds of (a) suitability (b) loyalty?

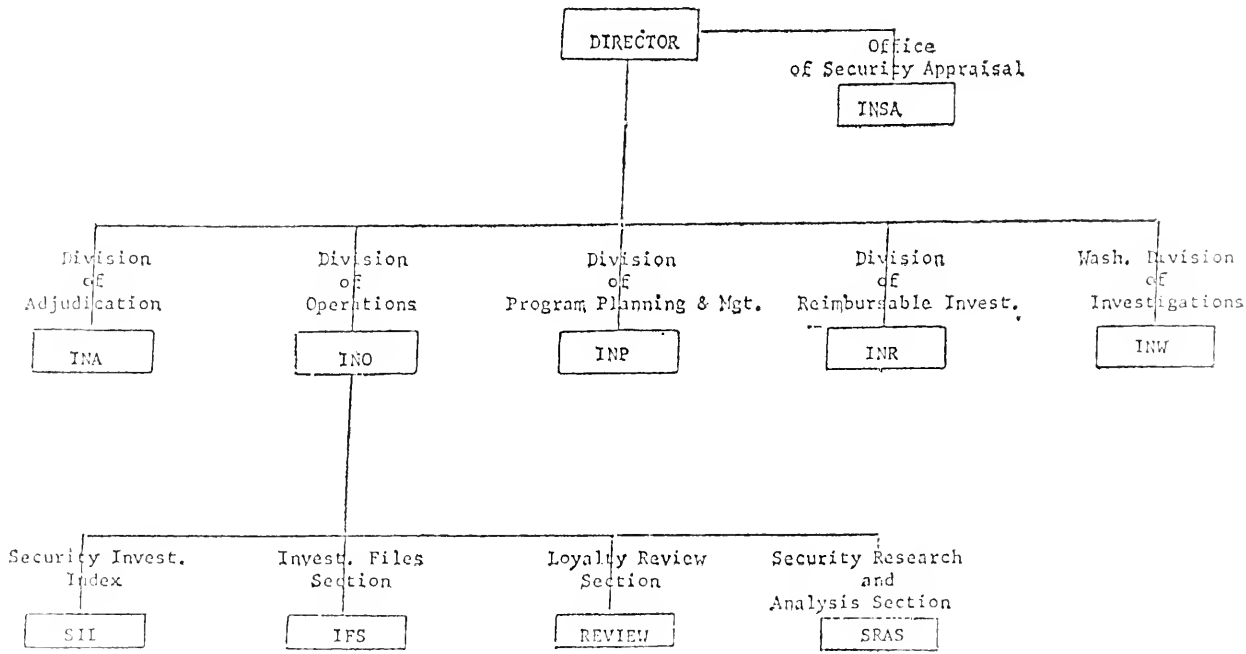
Answer. The attached chart provides figures on the number of applicants rated ineligible for suitability reasons and the number of applicants rated ineligible for suitability reasons in the past 10 years. There have been no ineligible ratings and no removals because of reasonable doubt as to loyalty during the past 10 years. A few have been rated ineligible for making false statements about membership in organizations whose aims were considered unconstitutional.

Question. Have you received multiple or successive requests for information from certain parties? When you receive such successive requests, can you use the same material in answering all of them—or do you have to treat each such request as a new request, and do an update job of research on your files? Please expand your answer to include difficulties encountered and any recommendations you may have to rectify this situation.

Answer. The overwhelming majority of requests for access have come from individuals upon whom we have conducted an investigation. We have received a few requests for information from our organizational files. When we have had successive requests for the same information we have furnished identical information to each party.

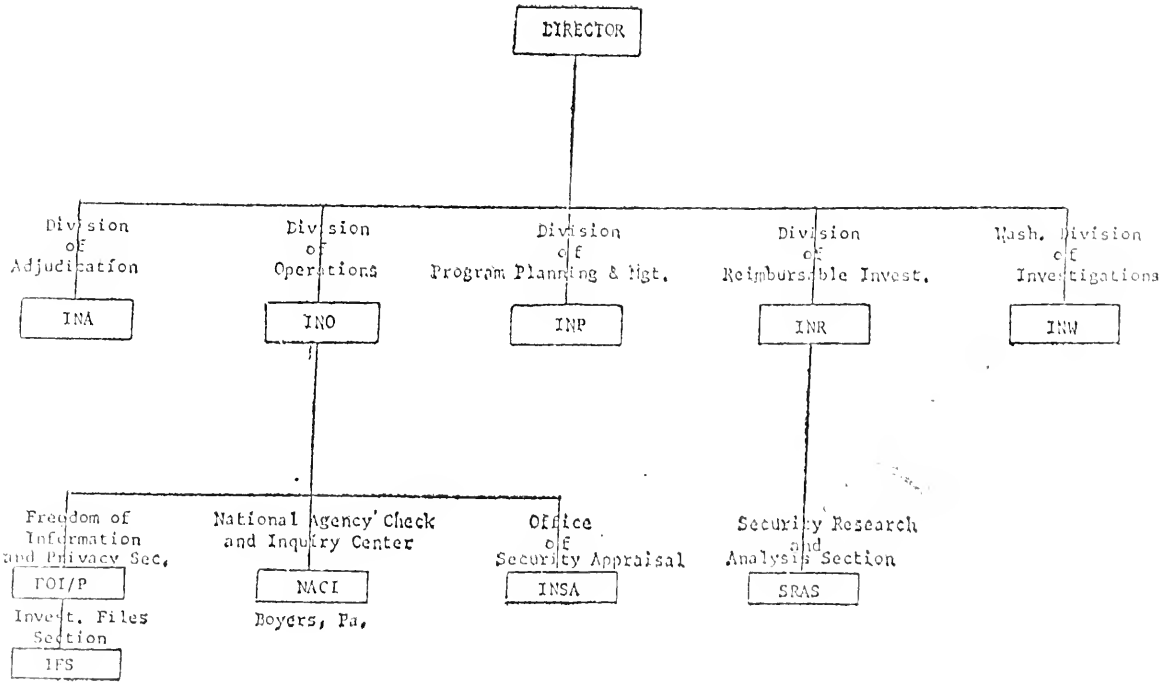
USCSC
Bureau of Personnel Investigations

1968



USCSC
Bureau of Personnel Investigations

1978



APPLICANTS RATED INELIGIBLE AND APPOINTEES REMOVED BY USCSC FOR SUITABILITY REASONS

	1968[1]	1970	1971	1972	1973	1974	1975	1976	1977[2]
Applicants:									
Rated ineligible	5,037	5,243	7,618	4,294	3,146	2,801	2,423	1,848	501
Withdrew application (while under suitability review)	91	106	113	99	78	361	156	142	138
Appointees:									
Removed	286	373	265	171	111	82	86	102	5
Quit or terminated	933	(3)	(3)	643	504	549	338	385	259

[1] Figures not maintained in 1969 (converting to automated work reporting).
[2] Fiscal year 1977 figures are distorted as a result of centralization of the NACI and adjudication functions.
[3] Figures not available.

Senator THURMOND. Mr. Campbell, Executive Order 10450 requires all persons employed by the Federal Government to be loyal to the United States. I know that Executive Order 10450 has been modified as the result of a series of court rulings.

Despite these changes, would it be correct to say that loyalty to the United States is still a condition of Federal employment, or has this been dropped?

Mr. CAMPBELL. It has not been dropped. Obviously, the changes in the way one conducts investigations may have an impact on that but, in principle, it has not been dropped.

Senator THURMOND. This, of course, means that disloyal persons may not be permitted to be employed by the Federal Government?

Mr. CAMPBELL. Correct.

Senator THURMOND. In implementing this policy, you obviously have to rely on background intelligence which comes from a number of sources—Federal, State, local, and private. Is that correct?

Mr. CAMPBELL. Yes; we certainly need to get all the information we legally can in order to make that kind of determination.

Senator THURMOND. And in addition to gathering background material on an applicant for Federal employment by checking with national agencies, you also try to get information that may be relevant to the applicant's suitability by asking routine questions of former employers, schools, local police departments, hospitals, and credit bureaus. Is that correct?

Mr. CAMPBELL. That is correct.

Senator THURMOND. If my list is not complete, what other types of organizations or institutions do you check with?

Mr. CAMPBELL. You mentioned schools; you mentioned former employers. We also check with neighbors. Any others, Mr. Drummond?

Mr. DRUMMOND. Of course the usual national agencies and the local police—I think that would cover it.

Senator THURMOND. Has the flow of information in response to such inquiries pretty well dried up as a result of the Privacy Act and the Freedom of Information Act?

Mr. CAMPBELL. In relationship to private employers and schools, and the like, as I said in my testimony, a majority still respond to our requests for information. There is clearly some chilling effect in terms of their willingness. Nonetheless, in that regard, we think we are still able to collect the kind of suitability information which we are seeking.

In relationship to State and local law enforcement agencies, it is the LEAA rules and regulations that we see as a greater hindrance than the Freedom of Information Act, itself, or the Privacy Act.

Senator THURMOND. Can you make a percentage estimate as to how much less information you are getting today?

Mr. CAMPBELL. I must turn to the man most closely associated with this and ask him. Mr. Drummond, would you be willing to make a percentage guess?

Mr. DRUMMOND. No; I would not, Mr. Chairman.

I would like to say this. We have conducted surveys of a number of reports of investigation conducted since the effective date of the Privacy Act to compare it with similar surveys we conduct periodically that were conducted prior to Privacy and Freedom of Information.

We have not been able, to date, based on these surveys, to notice any discernible amount of a lack of derogatory information.

But I think, as the chairman pointed out in his statement, we did not know what information we were not getting prior to the Privacy and Freedom of Information. We can only rely on witnesses' testimony which we include in the report of investigation.

We also do not know, at this time, what information we are not getting from people.

I am sure there are some who are reluctant to testify because of the Privacy Act, but we cannot notice it in the statistics we have developed based on our surveys.

Mr. SCHULTZ. Are you distinguishing now between responses by law enforcement officials, schools, neighbors, former employers, when you say "no discernible amount of a lack of derogatory information?"

In your prepared statement you say most law enforcement officials play it safe and they decline to release information?

Mr. DRUMMOND. We find, in checking with local law enforcement agencies, that if the investigator is doing this check personally—as he would in our full field investigations which we do on a preappointment basis in most instances—most police jurisdictions cooperate.

We feel that this is as a result of the rapport we have built up with them over a number of years, in going to the same jurisdictions.

With respect to the national agency checks and inquiries which are conducted by mail, we find that the police jurisdictions, in these cases, do not want to process our requests for information, mainly because of the burden of processing them.

We only do about 24,000 full field cases a year as opposed to 300,000 of these national agency checks and inquiries. We feel that the police jurisdictions, in refusing to respond to the mail inquiry, are in some cases influenced by the burden of processing the request.

Senator THURMOND. You say that while you are having difficulty with police departments, employers, and schools, most individuals still cooperate with the Civil Service Commission in providing information about applicants.

What about the quality of the information you get? Having been warned about the Freedom of Information Act, do most people tend

to hold back any derogatory information they have about an applicant?

Mr. CAMPBELL. As was just suggested, the kind of analysis we have done in an effort to determine whether that is the case does not demonstrate that it creates great difficulties. We, of course, cannot be certain how well people were responding before the act.

But, as one who has examined investigative reports in relation to specific employment decisions, may I say that our suitability investigations still reveal considerable information both of a positive and derogatory nature about individuals, and it appears that the chilling effect, or the impact, was not as great as might have been predicted.

Mr. SCHULTZ. You indicated in your statement that if a person requested it, that the information they provided could be held in confidence, and you could assure them confidentiality. I was just wondering what the basis for that assurance might be—statutory or regulatory?

Mr. DRUMMOND. It is statutory in the sense that the Privacy Act assigned to the Office of Management and Budget the responsibility for issuing guidelines to implement the act.

In issuing the guidelines for implementation, the Office of Management and Budget assigned to the Civil Service Commission the responsibility for issuing guidelines with respect to grants of confidentiality in cases involving civilians and to the Department of Defense the responsibility for issuing these guidelines for the military.

In issuing our guidelines to implement the Privacy Act, the specific regulation dealing with pledges of confidentiality can be found in section 736.103 of the Code of Federal Regulations.

Essentially, this provides that whenever an investigator—and this is an instruction not only to our investigators but to other Federal investigators in the executive branch—goes to a source or witness, he must first advise them of the Privacy Act, and he must advise them of the fact that the information that they give, as well as their identity, would appear in a report of investigation and be furnished to the subject, if he or she so requests.

The investigator is instructed not to suggest confidentiality, but if the source, or the witness, asks for confidentiality he may grant it; or, if the investigator, during the course of the interview has a feeling, based on experience, that this witness would be withholding material information, he can at that time grant a pledge of confidence.

As the chairman pointed out in his statement, a pledge of confidence only goes to the identity of the individual, and not the information that the individual gives except if the information would tend to identify the individual—then we can keep that information from being released, too.

Mr. SCHULTZ. That would be a judgmental decision made by the investigator?

Mr. DRUMMOND. It would be judgmental in terms of its release.

That would come up if the individual asks for a copy of his report of investigation.

Yes; that would be a judgment on the part of the investigator.

Mr. SCHULTZ. My point is your investigator's technique in advising the individual from whom you are seeking information that his

name and information may be given to the subject of investigation would have a chilling effect, and he may be reluctant. Why not take the other point of view and advise them that you can give them confidentiality, so you do get whole-cloth information?

Mr. DRUMMOND. The reason for that, sir, is that the legislative history of the Privacy Act shows that the intent of Congress was that pledges of confidence be granted sparingly.

If we were to advise all witnesses that they could have a pledge of confidence we would not be granting these pledges sparingly.

We must advise the witness that the subject can obtain a copy of the information provided, as well as the identity of the source. At what point during the interview the investigator should so advise the witness is left to the discretion of the investigating agency.

Investigators in the Civil Service Commission have been instructed that this notice must come before the interview begins.

Senator THURMOND. Is it accurate to say that the Civil Service Commission, like the Secret Service, relies primarily on intelligence developed by other agencies, local and Federal, including the FBI, CIA, IRS, and local police departments?

Mr. CAMPBELL. We rely very heavily on those other agencies.

Senator THURMOND. Even where the Civil Service Commission conducts full field investigations, it still relies heavily on intelligence gathered by other agencies, as I understand?

Mr. CAMPBELL. Yes.

Senator THURMOND. The subcommittee has heard from the intelligence units of many police departments that intelligence-gathering guidelines at State and local levels—in those cities and States that still do maintain domestic intelligence files—have been watered down to the point where they cannot include information dealing with mere membership in organizations like the Communist Party, the Trotskyite Party, the Maoists, the Puerto Rican Socialist Party, the KKK, the American Nazi Party, the Jewish Defense League, and the Palestine Liberation Organization. They cannot make an intelligence entry about membership in such organizations, unless there has been an indictment or conviction.

If local and State organizations, because of the guideline restrictions that have been posted in recent years, cannot maintain such intelligence, obviously there is no way they can pass intelligence on to you, is there?

Mr. CAMPBELL. That is correct.

Senator THURMOND. The subcommittee has also taken much testimony pointing to the conclusion that the majority of State and local law enforcement agencies do not now send information to Washington, even when they have it, because of the fear of disclosure under the Freedom of Information Act.

I note that a recent report by the Comptroller General to the Congress of the United States dealing with the investigation of Federal employees had this to say about restriction of access to local law enforcement records, and I quote:

> Due to legal constraints and nonresponses to inquiries, CSC cannot check some local enforcement records, even though the check is required by Executive Order 10450. By September 1976, the Chicago area had stopped sending to law enforcement agencies in New York, California, Minnesota, New Mexico,

Massachusetts, and Illinois, and 86 cities in other States, because the agencies refused to release criminal information to CSC. Some of the larger cities are Detroit, Indianapolis, and Washington, D.C. Thus, an investigation cannot surface criminal information on individuals who reside in these areas, unless the information is also on file with the FBI.

Was this quotation an accurate representation of the situation in September 1976?

Mr. CAMPBELL. Yes; it was.

Senator THURMOND. Has the situation improved, or has it gotten worse since September 1976?

Mr. CAMPBELL. It certainly has not improved. Has it gotten worse, Mr. Drummond?

Mr. DRUMMOND. It has not gotten worse. Washington, D.C., is mentioned, and it is true that at that time we were not getting record information from the Washington Metropolitan Police Department. However, we now are now getting it in personally investigated cases.

In March 1976, through the cooperation of the International Association of Chiefs of Police, they published in their magazine the fact that we do have access to police records, and that the Law Enforcement Assistance Administration, in revising their regulations, pointed out that their regulations pertaining to the dissemination of criminal justice information did not preclude the Civil Service Commission from getting it.

So this publication which goes to most of the chiefs of police in the country also helped open up some records, Senator Thurmond, but we are denied access in certain jurisdictions. For example, the State of Massachusetts has a law which provides that only recognized criminal justice agencies may get police information. At one time we were recognized by the board up there, but they withdrew this recognition, and we can no longer get criminal justice information from the State of Massachusetts, except by going to the courts.

As the chairman pointed out, we do not think it has gotten much better, but we are making progress with respect to individual jurisdictions.

Mr. SCHULTZ. Are you suggesting that the Washington Police Intelligence Bureau has reactivated its staff, or are you just saying that you are now getting information from them?

Mr. DRUMMOND. No; I am not saying that. I am not referring to intelligence information; I am referring to checking a name against police records to find out if there was any arrest or conviction.

Mr. SCHULTZ. I wanted to be sure, because Deputy Chief Rabe testified in June of 1976 that their intelligence section had been reduced from 20 to about 2 employees.

Mr. DRUMMOND. I am merely referring to police records and not intelligence information.

Mr. SCHULTZ. Thank you for the verification.

Senator THURMOND. You would agree that the starting point of any intelligence operation relating to personnel security for Federal employment would be the establishment of criteria or guidelines. In short, it does not mean to say we cannot afford to employ disloyal elements. You have to have some kind of criteria for your intelligence efforts that enables you to make these determinations as to what kind of affiliation and what kind of activity constitutes proper

cause for believing that the applicant in question may not be loyal to the United States, or may be committed to the subversion of the U.S. Government. Would you not agree to that?

Mr. CAMPBELL. I certainly would agree that there must be criteria by which those judgments are made.

Senator THURMOND. Do you have such criteria today?

Mr. CAMPBELL. No, sir, we do not.

Senator THURMOND. Is it accurate that the Civil Service Commission, some time ago, ruled that applicants for Federal employment could not be asked whether they are or have been members of the Communist Party or other organizations that are committed to the violent overthrow of American society, or whose sympathies lie with a government other than the U.S. Government? And is it accurate that the Civil Service Commission, a few months ago, ruled that such questions may not be asked even of applicants for sensitive positions?

Mr. CAMPBELL. Yes, it is true that we were advised by counsel that in relationship to the protections in the Privacy Act, such questions were inappropriate.

Senator THURMOND. Upon whose advice was that?

Mr. CAMPBELL. The Counsel of the Civil Service Commission.

Senator THURMOND. Was that checked with the Justice Department?

Mr. CAMPBELL. We took the action, and in the process of taking the action, directed that the following agencies be contacted for their judgments about it. Those agencies are: Treasury Department, State Department, National Security Administration, Defense Department, the Energy Department, Justice Department, and the Nuclear Regulatory Commission.

We are now awaiting responses from them relative to their views of this action.

Senator THURMOND. If you cannot ask questions designed to elicit such information, does this not mean, in effect, that it would not be proper to include such information in your reports or intelligence files?

Mr. DRUMMOND. The action taken by the Commission in directing that questions relating to organizational membership on the Standard Form 86—our security form—was taken, one, because, as they were currently worded on the application, it was the opinion of the General Counsel that they were unconstitutional. These questions have been on there, unchanged, since back in the 1960's.

There have since been a number of court decisions which the General Counsel felt caused the questions not to meet the test of constitutionality.

So the Commission action in directing that they not be answered—and as Chairman Campbell has pointed out—was that those questions, as they are now worded, should not be answered, and before new questions are developed, if in fact there is a need, the advice of counsels of the agencies he mentioned should be secured, first, to ascertain whether or not a question can be framed that would meet the constitutional test; and two, whether or not it would be good public policy to continue the questions.

Mr. SCHULTZ. Again, this was the Counsel for the Civil Service Commission?

Mr. DRUMMOND. Yes, sir.

Senator THURMOND. Can you still ask questions and make intelligence notations relating to membership in the Community Party or in Marxist revolutionary organizations like the Trotskyites or Maoists?

Mr. DRUMMOND. Yes. Our investigators really have not changed the nature of their questioning because of the Privacy Act. We still ask the questions. Of course, we do not ask a witness if the subject was a member of the Communist Party. We ask whether or not they know of any organizational affiliations.

We can still ask these questions. However, it is what goes in our report of investigation that is important in terms of the Privacy Act.

Senator THURMOND. I am aware of the Supreme Court decision of which you speak. The question in my mind is whether the interpretations that have been placed on the Supreme Court decision do not actually go beyond the intent of this decision.

Let me ask you a series of questions bearing on this point.

Is it your contention that the Supreme Court decision, in effect, bans intelligence gathering or making intelligence notations about membership in the Communist Party and other organizations committed to the unlawful overthrow or violent change of our Government?

Mr. DRUMMOND. I do not think that the Supreme Court decision would preclude us from maintaining in our records information with respect to over acts of an individual who is a member of any of these organizations.

But I think both the Privacy Act and court decisions preclude our maintaining in our files the mere fact that an individual is a member of one of these organizations with no information to show that he has committed any unlawful acts.

Senator THURMOND. Apart from not asking any questions, would you consider it proper to receive intelligence that an applicant for Federal employment was an active member of the Communist Party and put this information into your own intelligence files?

Mr. DRUMMOND. If we received this information during the course of our investigations, it would prompt us at that time to refer the case to the Federal Bureau of Investigation for further full field investigation on their part. This would be in accord with Executive Order 10450.

Whatever their investigation produced would then be reviewed by us prior to sending it to the agency for which we were conducting the investigation.

If the investigation developed information that these people were, in fact, involved and had either committed certain acts or acted contrary to law, we would then forward it on to the Agency.

If, however, as I mentioned before, the total investigation merely showed membership in an organization without any illegal acts or any other adverse information pertaining to that membership, we think that the Privacy Act precludes us from maintaining that information in our files.

Mr. SCHULTZ. If I understand what you are saying, an allegation of mere membership would go no further, and you would not maintain it in your files——

Mr. DRUMMOND. If the total investigation developed that it was mere membership.

Mr. SCHULTZ. An allegation of membership along with an overt act would result in further investigation. Is that correct?

Mr. DRUMMOND. No. You could have the investigation prompted just by the membership. But the question then is what do you maintain in the files? If all we have is the fact that an individual was a member of an organization, to maintain that alone in our file after investigation has failed to develop any further information would amount to maintaining records on how people exercise their first amendment rights, and this is precluded by the Privacy Act.

Mr. SCHULTZ. This is true for whatever level of employment the applicant is being considered?

Mr. DRUMMOND. That is true.

Senator THURMOND. And you would not maintain in your files the information that a man is a member of the Communist Party or any organization that stands for the violent overthrow of our Government. Mere membership would not be enough to allow you to put that in your files—you would have to have some overt act?

Mr. DRUMMOND. Yes. We would have to have something more than the mere membership.

Mr. SCHULTZ. What is the threshold of proof?

Mr. DRUMMOND. First of all, we do not conduct loyalty investigations, as such. We conduct investigations, and when a question of loyalty or any of the issues as set forth in Executive Order 10450 come up, we refer to the Federal Bureau of Investigation.

The Federal Bureau of Investigation conducts further investigation and then gives us the results with any assessment. The only thing I would have to say is, if there is then even a question that in connection with this membership this individual could be thought possibly to do some act contrary to the interests of the Government, we would forward that on. But in the absence of any information or indication whatsoever, other than mere membership, we feel that we cannot maintain that in our files.

Mr. SCHULTZ. Would such intelligence relating to membership be part and parcel of the suitability aspect in considering an applicant for employment?

Mr. DRUMMOND. One of our suitability disqualifications is reasonable doubt as to loyalty of the individual to the Government.

As pointed out in the answers to the questions, there has not been an individual removed from Federal service or denied appointment to the Federal service on the basis of reasonable doubt as to loyalty, during the past 10 years.

As a matter of fact, from 1956 to 1968 there were only 12 applicants denied employment and 4 appointees removed from employment on the basis of reasonable doubt as to loyalty.

From 1968 to the present, there has been none.

Mr. SCHULTZ. Do you find that significant?

Mr. DRUMMOND. No. I think perhaps I should clarify the 1956 to 1968 statistics.

There were 510 applicants whose loyalty may have been questioned in addition to those 12, but they were removed on other suitability grounds. This could have been for criminal conduct. It could have been because of delinquency or misconduct in prior employment.

Nevertheless, there was a loyalty question, but CSC chose to use other suitability grounds for their removal, resulting in only 12 being removed because of reasonable doubt as to loyalty.

I think the reason for this is that there has been a reluctance over the whole history of the security program to stigmatize some individual with the disloyalty label when there is some other way in which he can be removed or denied employment. I think this is general knowledge.

Mr. SCHULTZ. Are you suggesting that what we cannot do by loyalty we can do it by suitability?

Mr. DRUMMOND. I am not. I think this is clearly unethical. If there is a legitimate question of loyalty, it should be explored, and if the result of that exploration tends to prove that the individual is a threat to the security of the country, I think he should be denied employment or removed with full due process.

But I do not think we should use other ways of getting rid of them when we cannot use the reasonable doubt of loyalty disqualification, if the person is otherwise suitable.

Mr. SCHULTZ. Suitability is very broad?

Mr. DRUMMOND. It is.

Mr. SCHULTZ. Mr. Campbell, in your opening statement you mentioned the prohibition on maintaining information with respect to how a person exercises guaranteed rights. I know you would not want to clutter up your files with information about membership in the American Legion, the Kiwanis, and such, but is there not a real distinction from such organizations and organizations like the KKK and the American Nazi Party. Would you not add that to your files?

Mr. CAMPBELL. It is our interpretation that the court decisions and the law provide protection for those kinds of memberships in the same way as it does for other types of memberships, and the crucial issue is "overt acts" as opposed to membership.

Mr. DRUMMOND. Could I add one thing to that?

I think it is also a question of the nature of the position. I think Senator Thurmond alluded to this, but you mentioned specifically the KKK.

If the individual was being considered for a position as an accountant, or something of that nature, and our report showed only KKK membership it should not appear in his file.

If he was being considered for the position of Director of Equal Employment Opportunity, then someone might want to know, and this has nothing to do with security.

Mr. SCHULTZ. It is not a case of "might want to know"—they ought to know.

Mr. DRUMMOND. That is why I say the nature of the position should have some effect on it. But the general rule is that membership alone, under the bans as imposed by the Privacy Act with respect to maintaining first amendment information cannot be maintained in our files.

Mr. SCHULTZ. You said in your opening statement that the Commission interprets section (e)(7) of the Privacy Act as a prohibition against reporting any organizational or affiliation unless the subject of investigation in connection with such membership engages in or advocates, one, the denial of the person's rights guaranteed by the Constitution; two, the overthrow of legally constituted units of Government by violent means; three, the commission of crimes against person or property.

Then you went on to say that under this interpretation, "We will not maintain information with respect to mere membership in any organization unless one of the above criteria were met."

Let me just pursue that a little.

If an applicant belonged to the KKK, and you had no proof that he engaged in activities himself or made speeches aimed at the denial of a person's rights guaranteed by the Constitution, would you be able to receive and then report intelligence about his membership?

Mr. CAMPBELL. The question is, Would we be able to receive and report intelligence on his activities?

Mr. SCHULTZ. Yes.

Mr. CAMPBELL. If the information pertained solely to membership and nothing more, we would not furnish it, nor would we make it a part of the file.

Mr. SCHULTZ. Did you say it would not be passed?

Mr. CAMPBELL. The information would not be provided, if it pertained solely to membership.

Mr. SCHULTZ. I have a similar question with regard to membership in the Communist Party.

If the Civil Service Commission has information that he is a member of the Communist Party, or the Trotskyites, or the Maoists, but he has not, to the knowledge of the Commission, engaged in any act designed to bring about the violent overthrow of the U.S. Government, nor made statements concerning such overthrow, is it your position that he could not be denied employment, nor could you report anything about his affiliation in the Communist Party or other Communist organizations? Is that correct?

Mr. CAMPBELL. Yes, I believe that is correct.

Mr. SCHULTZ. Suppose an applicant was a member of the Puerto Rican Socialist Party, which is really a Castro Communist Party that openly acclaims and supports the terrorist activities carried out by the Puerto Rican terrorist organization, the FALN. A recent raid on a Chicago bomb factory established that members of the Puerto Rican Socialist Party have actually been involved in terrorist activities of the FALN. The Puerto Rican Socialist Party, in addition, supports the Castro government and maintains a permanent office in Havana.

Can you receive reports and file intelligence on his membership in the Puerto Rican Socialist Party, and does such membership disqualify an applicant from employment in a non-sensitive or sensitive Government position?

Mr. CAMPBELL. Standing alone as mere membership the information would not disqualify him.

Mr. SCHULTZ. If you had information that an applicant, setting aside membership, participated in a violent, revolutionary act, such

as the bombing of La Guardia Airport—I am not saying he put the dynamite there but participated in the project—would that constitute sufficient criteria to eliminate him from Government employmen at any level?

Mr. CAMPBELL. Let me respond and then Mr. Drummond will respond also.

Since employment decisions are made by the departments and agencies, such information would indeed be made available to the department or agency in relationship to making its hiring decision.

Mr. SCHULTZ. The ultimate decision would be made by the department or agency?

Mr. DRUMMOND. If we were doing the investigation for them, particularly in sensitive cases—that is when we do it for them—the employing agency would make the decision. If we were doing it for ourselves, in terms of determining the suitability of the individual, certainly the information would be part of the file, and we would make the determination, based on the information, as to whether or not he should be denied employment or removed, if he was already an appointee.

Mr. SCHULTZ. I know you stated that you are not in the intelligence-gathering business, but let me preface this.

Many times, in a hostage situation, which is clearly a criminal act—we use the euphemism, "terrorism," but it is still a criminal act—many of the groups responsible for such acts publicly claim credit for it. Do you have any records of these types of organizations, and do you record in your files organizations who claim credit for terrorist-type acts?

Mr. DRUMMOND. We do have organizational files, as was indicated in the opening statement. To the extent that the periodicals we subscribe to and newspaper accounts show where these organizations have claimed credit for it, yes, it would be kept in those files.

Mr. SCHULTZ. The list of subversive organizations is no longer in existence. The Justice Department stopped putting it together. Do they provide you periodically with information about revolutionary organizations in this country?

Mr. DRUMMOND. No; they do not provide us with information unless it is in connection with us checking their records on an individual, and if there is any question about him we will get the information from the Justice Department.

But the Justice Department does not provide the Civil Service Commission periodically with a bulletin, so to speak, of these organizations.

There are certain agencies in the Government that exchange information of this nature, but we are not one of them.

Mr. SCHULTZ. Does that not bother you—that you do not have that information? If you were asked to name the top 10 revolutionary organizations in the United States, you would have no way of knowing who they were except on an individual basis?

Mr. DRUMMOND. That is true, sir, but I think our function at the Civil Service Commission is different from the intelligence-gathering agencies.

We conduct personnel security investigations on individuals and not on organizations. We rely heavily on the Federal Bureau of

Investigation which really has the statutory authority for internal security.

To the extent that we check a name against their files, if that individual has had any activity with these organizations, we should get it.

But I think if you check with the Federal Bureau of Investigation, you will find that the Justice Department guidelines issued about 1½ years ago have seriously curtailed their own ability to inquire into or investigate organizations.

Mr. SCHULTZ. Can you assess the magnitude of the independently developed information and intelligence developed about an applicant? In other words, every applicant provides you with references. You go out and corroborate what he tells you.

I assume that a good investigator develops independent information. He develops new leads for himself. Could you give us any measurement of this independently developed information and how productive it is?

Mr. DRUMMOND. I do not believe I understand the question.

When we investigate an applicant or an appointee, the investigator is limited in terms of where he goes. He goes to the place of employment, to neighbors, and to people who know the individual well, to get an assessment of his overall character and reputation.

The information reported pertains strictly to that individual.

If, in the course of that investigation, he finds some information we feel would be significant for our use or for that of another Federal agency, we would secure it and give it to the Federal agency.

But in terms of his own investigation, we are limited in terms of what we can inquire about and what we develop.

Mr. SCHULTZ. I think you misunderstood. Where a man lists his employer, school, neighbors, and personal references, does the investigator develop, independently of those people, some other avenue to find information about the applicant?

Mr. CAMPBELL. Excuse me. Certainly the investigator follows independent leads as a result of the leads provided him by the potential employee.

That process will, indeed, look into other matters that are not revealed by the information supplied by the prospective employee, or the current employee.

Mr. SCHULTZ. I wonder if you would give us your candid opinion. Is Executive Order 10450 a hollow shell that is really meaningless and outdated? We have the impression that we do not have a really vibrant loyalty security program.

Mr. CAMPBELL. Certainly we would argue, and have, that there need to be changes in the Executive order, and those changes should be related to the current situation in this field.

As far as the Civil Service Commission is concerned, we are not an intelligence-gathering organization, nor do we think we should become one in relationship to our function.

As far as our investigative work is concerned relative to determining suitability of people for Federal employment, we are satisfied that the constraints under which we operate have not made it impossible for us to provide the kind of information that employing agencies need in order to make good personnel decisions.

Mr. SCHULTZ. Have you, in accordance with the provisions of Executive Order 10450, made some studies relating to the deficiencies, and made recommendations relating to protecting the rights of individuals who are seeking Government employment?

Mr. CAMPBELL. I would like to ask Mr. Drummond to comment. I would only say that in relation to the time I have been with the Commission we have consulted closely with the GAO in the process of their examination of the problems in this field.

Mr. DRUMMOND. This is under section 14 of the order which Senator Thurmond referred to earlier, we do have a security appraisal function where we periodically go out and evaluate agencies in terms of the manner in which they are carrying out their responsibilities under the order.

We do this and then report to the head of the agency.

Executive Order 10450 refers to reporting to the National Security Council. This order was issued in 1953. I think that 1954 or 1955 was the last time anyone reported to the National Security Council.

I do not know why this was dropped. My unofficial information is that somebody said, "Don't report unless you have something serious to report." But there have not been periodic reports to the National Security Council.

Mr. SCHULTZ. Are you called upon, as a lead agency in implementing the provisions of Executive Order 10450, to guide the various heads of departments and agencies who are implementing their own employee security programs?

Mr. DRUMMOND. Yes; we work closely with the agencies' security officers. As a matter of fact, one of the subcommittees of our Interagency Advisory Group deals with security and suitability, and we meet frequently with them.

For example, we met in connection with the questions with respect to organizations which were removed from the standard form 86 and currently under study.

We do work closely with the agencies.

Senator THURMOND. Would you be able to provide this subcommittee with some of your recommendations for legislation or for the needs of closing the loopholes in Executive Order 10450 so we might have a reliable security/loyalty/suitability program?

Mr. DRUMMOND. Yes.

Senator THURMOND. Without objection, your recommendations will be inserted in the record at this point.

[The Civil Service Commission did not submit to the subcommittee any recommendations in its own name. Mr. Drummond, however, subsequently submitted for the record a copy of a letter dated February 16, 1978, from Mr. Alan K. Campbell to the Hon. Elmer E. Staats, Comptroller General of the United States, stating the Civil Service Commission's position on the various recommendations to Congress contained in the General Accounting Office report of December 16, 1977, titled "Proposals to Resolve Longstanding Problems in Investigations of Federal Employees." See p. 228.]

Mr. SCHULTZ. In connection with your statement, on page 6:

Although the organizational files remain at the present the Commission has notified GAO that it will adopt the GAO recommendation to dispose of these files also.

The chairman just had to leave briefly for another meeting. Before he did so, he asked that I note on the record that he did not believe that this hearing was the proper forum for official congressional notice of your intent to destroy those files. Senator Thurmond expressed his opinion that he hoped you would reconsider your position and refrain from destroying the files.

Mr. CAMPBELL. Fine. We shall not assume this is official notice.

Mr. SHORT. What was the GAO recommendation?

Mr. DRUMMOND. The GAO recommended that we either get authority from the Congress to maintain these organizational files or dispose of them. The Commission feels we should dispose of them because there is duplication between what we have and what the Federal Bureau of Investigation has.

Mr. SCHULTZ. Your authority is to assign responsibility and maintain files?

Mr. DRUMMOND. We did not speak to the authority in our response to the GAO report. I would imagine the general housekeeping statutes would give an agency the authority to maintain information of this sort, if they so chose.

Mr. SCHULTZ. Mr. Short has a question.

Mr. SHORT. Considering the individual in the KKK, that fact would not be entered into the file. We seem to be zeroing in here on the initial application for employment.

However, take the example of the individual who comes on board as a grade 5. You do not know he is a member of the KKK, and later he attains a grade 12 position and is considered for the EEO job, but no one at that point would know it.

Under these circumstances don't you feel that this information should be included?

Mr. CAMPBELL. It seems to me that in the example you give, the person who remained in the agency long enough to go from a grade 5 to 12 would become quite well known to the supervisors and fellow employees.

If the KKK membership had an impact on attitude and behavior this would, indeed, become known in the promotion process which is a complex one.

Therefore, the membership information would be less useful at that point than it is at the point of initial employment.

Mr. SHORT. I would hesitate there, but I can see the point you are making.

Mr. SCHULTZ. I think it is obvious that if you can stop someone at the first instance who should not be a Government employee, it is far better than to have him on the rolls for 10 years, and then investigate. Is that what you said?

Mr. CAMPBELL. What I am saying is that the degree to which a mere membership influences a person's ability to do the job becomes known in the course of that employment—evidence of that kind—is much more valuable in making decisions than the sort of information that would be available at the time of hiring.

Mr. MARTIN. There has been a lot of decisions on the Privacy Act and the Freedom of Information Act. Most laws and even Supreme Court decisions are open to a variety of interpretations within certain limits, but there is some latitude on how they can be interpreted.

You can give them a strict interpretation, or you can seek a more flexible interpretation.

I must say that I have the impression from what has been said here today that the Civil Service Commission has always construed the laws of the Supreme Court in the least flexible manner from the standpoint of maintaining a sound employee security program.

For example, the Supreme Court decision, as I understand it, has ruled that a person cannot be denied employment by the Federal Government on the basis of mere membership in the organizations we spoke about.

The Supreme Court decision, however, did not say that an applicant for Federal employment cannot be denied employment at any level based on mere membership.

I hear that in Great Britain applicants for employment by the Government or people employed by the Government, if they are dismissed on security grounds, are transferred to another position in the Government which gives them equal compensation. They have a right to Government employment, but not to any position in Government.

You have recently revised your questionnaire form for applicants for employment in sensitive positions in a manner to conform with the questionnaire form you use for applicants for nonsensitive positions. Questions relating to membership in Communist organizations or other totalitarian organizations have been eliminated in the questionnaire that applicants for sensitive positions are required to fill out.

The question in my mind is whether this does not go a little beyond the intent of the Supreme Court. Was this really necessary? Or should it not have been tested in the courts by the Civil Service Commission, before the Civil Service Commission construed the Supreme Court decision as meaning precisely this?

Mr. CAMPBELL. Without getting into a discussion of whether we are strict constructionists or not in relation to decisions, it is again a matter of interpretation, as you suggest.

We are consulting with fellow agencies as to their views on this matter, but the position we have taken is one which we believe is consistent with the Supreme Court cases.

Mr. MARTIN. But is it consistent with good security practices?

Mr. CAMPBELL. That is a policy question.

I believe that living up to that decision does not eliminate the possibility of good security practices.

Mr. MARTIN. Going a little further, as you have interpreted the Supreme Court decision and the first amendment requirements of the Privacy Act, an applicant cannot be denied Federal employment unless it has been established that he has engaged in unlawful activities, or he is fully aware of the unlawful activities conducted or planned by the organization to which he belongs.

Could this not be construed as meaning that an applicant can be denied employment if the evidence available gives serious reason for believing that, in joining the KKK, or the Communist Party, or or other extremist organization, the applicant did have full knowledge of the aims and methods to which these organizations were

committed—I would say that this is a reasonable, commonsense interpretation of their membership in such organization—or if the available evidence gives serious reason for believing that the applicant had engaged, or was planning to engage in, or was closely associated with others who had engaged in violent acts against society, or were working to bring about the violent overthrow of society?

The point is, What degree of proof is required? Do you have to have the kind of proof that would stand up in court? As you know, law enforcement agencies frequently have intelligence that satisfies them completely that a person is guilty of espionage or even murder, but they do not have the kind of information that would stand up in a court of law.

How much proof do you have to have before you can decide that an applicant's membership in an organization does constitute a liability which the Federal Government cannot assume in terms of his prospective conduct and loyalty to the Government?

Mr. CAMPBELL. Certainly the kind of proof required is not the kind that would be required in a court of law.

However, we firmly believe that if we have information of membership, if that membership goes beyond mere membership in terms of advocacy or action that can be found through investigative methods we would so report and maintain, but to rely on mere membership is not consistent with first amendment protections.

Mr. MARTIN. Is not mere information about membership the beginning of any information about activities pursued as a result of this membership?

Mr. CAMPBELL. There is no question that membership will mean that one will delve into the matter to determine whether the kind of behavior resulting from membership is related to potential employability.

Mr. SCHULTZ. Mr. Campbell and Mr. Drummond, we thank you very much for your assistance this morning.

We regret we could not have a full panel to honor your presence this morning.

We will stand adjourned.

Mr. CAMPBELL. Thank you very much.

[Whereupon, at 11:50 a.m., the hearing was adjourned, subject to the call of the Chair.]

[The following material was subsequently supplied for the record:]

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., October 6, 1977.

Hon. ALAN K. CAMPBELL,
Chairman, U.S. Civil Service Commission,
Washington, D.C.

DEAR COMMISSIONER CAMPBELL: I am writing to invite your appearance before the Senate Subcommittee on Criminal Laws and Procedures in connection with the Subcommittee's inquiry concerning the erosion of law enforcement intelligence capabilities and its impact on the public security.

The Criminal Laws Subcommittee has already held a number of hearings on this subject, continuing the work of the former Senate Subcommittee on Internal Security. In the course of these hearings, testimony was received from Mr. Stuart Knight, Director of the U.S. Secret Service; Mr. Peter Bensinger, Director of the Drug Enforcement Administration; Mr. Robert

L. Chasen, Commissioner, U.S. Customs Service; Mr. Laurence Silberman, former Deputy Attorney General; Mr. Eugene Rossides, former Assistant Secretary of the Treasury, and from numerous law enforcement officers at the state and local level, as well as a panel of security experts from private industry.

Enclosed for your information is a brief summary of the hearings which appeared in the last annual report of the Senate Subcommittee on Internal Security, and also copies of several of the more important statements that have been made before the Subcommittee on Criminal Laws and Procedures in the course of recent hearings. In general, this testimony points to the conclusion that there has been a massive destruction of intelligence across the country and that the free exchange of intelligence between law enforcement agencies and other government agencies, which used to be taken for granted, simply does not exist. State and metropolitan police officials have told the Subcommittee that they send very little information to Washington these days and that Washington, in turn, sends very little information to them. Mr. H. Stuart Knight of the Secret Service testified that there had been a 50-60 per cent fall-off in the intelligence which his agency was receiving, and that the qualitative degradation might account for a further 25 per cent reduction in intelligence input. In private industry, according to our witnesses, personnel security has been grievously hurt by their inability to conduct background checks on applicants seeking sensitive positions.

In the case of your Commission, we are particularly concerned with what impact the erosion of law enforcement intelligence gathering and the near-freeze on intelligence sharing has had on the implementation of the Federal loyalty-security program. Among other things we would like to discuss with you are:

(1) the degree of cooperation you are now receiving from local, state, and federal agencies, and how this compares with the cooperation you were receiving prior to the enactment of the Freedom of Information and Privacy Acts.

(2) any difficulties you may be encountering in conducting Civil Service Commission investigations of applicants for federal positions, as a result of restrictions imposed by the Freedom of Information and Privacy Acts.

(3) the magnitude of the problem, if any, with which the Civil Service Commission has had to contend relating to the processing of requests for information under the Freedom of Information and Privacy Acts. (I shall be sending you a series of detailed questions on this matter, so that your staff will have the time and opportunity to research the answers.)

(4) the impact that the privacy legislation has had on the Civil Service Commission's ability to maintain its own research files—personal and organizational—for security purposes.

I have designated Richard L. Schultz, Counsel, to handle these hearings, and I have instructed that he contact your office for the purpose of arranging an early date for your appearance.

With my thanks for your cooperation,

Sincerely,

JAMES O. EASTLAND,
Chairman.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., March 1, 1978.

HON. ALAN K. CAMPBELL,
Chairman, U.S. Civil Service Commission,
Washington, D.C.

DEAR COMMISSIONER CAMPBELL: Thank you for your appearance before the Senate Subcommittee on Criminal Laws and Procedures on February 9, 1978. Your testimony concerning the impact that the erosion of law enforcement intelligence has had on your ability to implement the Federal Employee Security Program was helpful to our understanding of the problem.

In all frankness, we were profoundly disturbed by some of the answers which you and Mr. Drummond gave in the course of your testimony.

A very serious question is raised by your statement that "most law enforcement officials personally would like to cooperate with us, but because of confusion resulting from different interpretations of LEAA regulations, Privacy Act provisions and state laws, they play it safe by declining to release information." If you can't get information from local law enforcement agencies, it becomes abundantly clear that your ability to do meaningful background checks is virtually non-existent.

Although the primary focus of our recent hearing was on the impact that the erosion of law enforcement intelligence has had on the public security, we were particularly disturbed by what emerged concerning the entire state of our Federal Loyalty-Security Program.

You were asked whether loyalty to the United States Government was still a condition of Federal employment—and you replied that it was. You next agreed that "The starting point of any intelligence operation relating to personnel security in Federal employment would be the establishment of certain criteria or guidelines." But then you testified that you did not have any such criteria.

Then it emerged that as matters now stand you do not even ask questions of applicants for sensitive positions whether they are or have been members of Communist or Nazi or other totalitarian or violence-prone organizations—that in the absence of an overt act, mere membership in such organizations would not disqualify a person for Federal employment. In the course of the questioning, we mentioned quite a number of organizations—the American Communist Party; the KKK; the American Nazi Party; the Maoists; the Trotskyists; the Prairie Fire Organizing Committee—which publicly supports the terrorist activities of the Weather Underground; the Puerto Rican Socialist Party—which similarly supports and defends the violence perpetrated by the Puerto Rican terrorists; the Jewish Defense League—which engages, in its own name, in acts of violence; and the Palestine Liberation Organization—whose American affiliates support the terrorist acts perpetrated by its parent organization in other countries. The same answer, apparently, applied to all organizations: In the absence of an overt act, mere membership is not a bar to Federal employment.

On the question of mere membership, Mr. Drummond at one point stated that, if it were discovered that an applicant was a member of the KKK, he probably would not be considered suitable for a job with the Equal Employment Opportunities Commission—although his membership would apparently be no bar to employment in other government positions, even sensitive positions. What Mr. Drummond did not explain was how you could possibly find out that an applicant was a member of the KKK if you cannot ask the applicant or those who know him any questions about mere membership in any organization. Nor did Mr. Drummond offer any example of the kind of employment for which mere members of the many other organizations of the far left and the far right might be found unsuitable.

You also informed the Subcommittee that the Index Card System set up in the forties has been eliminated "by action of the Commission", pursuant to Section (e)(7) of the Privacy Act; and that you have notified GAO that you "will adopt the GAO recommendation to dispose" of the organizational files which still remain in the possession of the Commission.

In the light of this information, I find it difficult to avoid the conclusion that over the past five years or so, without the knowledge of Congress and contrary to statutory requirement and the Commission's own regulations, there has been a progressive dismantling of the Federal Loyalty-Security Program—until today, for all practical purposes, we do not have a Federal Employee Security Program worthy of the name.

Your statements and those of the GAO Report on the contemplated destruction of files are both disturbing and confusing. The GAO Report on page vi said "The Commission has decided to destroy its security files on alleged subversive and disloyal activities." I note that this went somewhat beyond the recommendation of the GAO itself, which simply suggested that the Civil Service Commission "obtain authorization from Congress for the files on alleged subversive and radical organizations, or delete them." Moreover, when you said that "the Index to the Security Research files was eliminated pur-

suant to Section (e)(7) of the Privacy Act", it was unclear whether they have been physically eliminated or simply locked up, or whether you contemplate their physical elimination.

We ask that you postpone taking any irrevocable action with regard to the files currently in your possession until Congress has had an opportunity to consider the matter and make a finding.

With our thanks for your cooperation in this matter.

Sincerely,

JAMES O. EASTLAND,
Chairman.
STROM THURMOND,
Ranking Minority Member.

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., March 13, 1978.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: During my appearance before the Senate Subcommittee on Criminal Laws and Procedures on February 9, 1978, Mr. Richard Schultz of your staff asked if the Commission would provide some recommendation for legislation or for "shoring up the holes" in Executive Order 10450.

I am attaching a copy of our response to the GAO Report titled Proposals to Resolve Longstanding Problems in Investigations of Federal Employees. You will note that our response refers to the fact that we have submitted to the Office of Management and Budget a proposed new Executive Order to replace E.O. 10450. This proposed order would establish: (1) criteria for determining sensitivity of positions, (2) the scope of personnel security investigations, and (3) areas of responsibility for implementation and management of the personnel security program. The proposed order would require the Department of Justice to issue guidelines for the referral of cases to the Federal Bureau of Investigation and establish criteria for the use of the information developed by these investigations in the adjudication of these cases.

Executive Order 10450 is twenty-five years old. The order has been amended as recently as 1974 to reflect both court decisions and legislation, but there is no question that a new order is needed.

A viable personnel security program is, in a very large sense, dependent upon the governments ability to collect, maintain, and disseminate information pertinent to a security determination. The Privacy Act of 1974 is specific as to the type of information that may be collected, and also speaks to the use of the information collected, as well as its dissemination. The proposed order addresses these issues, but we would not be opposed to legislation that would provide guidance in this area, particularly the whole area of First Amendment activity.

We appreciated the opportunity to testify before your Subcommittee and will be pleased to supply any additional information you may need.

Sincerely yours,

ALAN K. CAMPBELL,
Chairman.

Enclosure.

FEBRUARY 16, 1978.

Hon. ELMER E. STAATS,
Comptroller General of the United States, General Accounting Office, Washington, D.C.

DEAR ELMER: This is our response to the General Accounting Office report on Proposals to Resolve Longstanding Problems in Investigations of Federal Employees, dated December 16, 1977 (FPCD–77–64 B-132376). The response is forwarded in accordance with the Legislative Reorganization Act of 1970 (31 U.S.C. 1176).

The Act requires that we state our position on each GAO recommendation and finding of deficiency with an explanation of corrective actions taken. Our

response to the report will address, in order, a recommendation to the Congress and recommendations to the Chairman, Civil Service Commission.

RECOMMENDATION TO THE CONGRESS

GAO recommends that the Congress consolidate into one law the authority to investigate and judge the suitability of Federal employees, including the potential of employees in sensitive positions to impair national security. We agree that such consolidation of investigative authority is needed. Although we have no objection to consolidation through legislation, we feel that it can best be accomplished by direction of the President. We concur with the GAO finding that Executive Order 10450 is out of date. However, we feel that its shortcomings have only become apparent in retrospect and are more a result of changing times than any inborn weakness. We believe that a new Presidential direction building on 10450's strengths and eliminating its weaknesses should be sufficient foundation upon which to build an investigative program.

The recommendation speaks to the consolidation of adjudicative authority; we hold that the Commission should judge applicant suitability, with agencies making determinations on all applicants for and appointees to sensitive positions. This division of adjudicative authority is consistent with the intent of the Civil Service Act and Executive Order 10450. The Commission recently approved the assignment of suitability evaluation of appointees to the employing agency. This action was taken to accommodate the responsibility implied in E.O. 10450, and because we believe the employer is in the best position to weigh the information at issue against the duties of the position and the mission of the agency.

As part of its recommendation, GAO suggested several specific program areas for consideration by Congress:

Congress should consider restrictions imposed on personnel investigations by other laws, such as the Privacy Act of 1974, and court decisions protecting individuals' constitutional rights

There is a need for review in this area, especially with respect to striking a balance between the constitutional rights of the individual and the responsibilities and needs of the Government as an employer. The Congress or the Attorney General should attempt to reconcile any conflicts between the intent and application of the restrictions, and prescribe the extent to which information related to exercise of First Amendment rights may be collected, maintained, disseminated, and used in the adjudicative process.

Congress should consider whether CSC should investigate occupants of nonsensitive positions only to determine prior criminal conduct, leaving to employing agencies the responsibility for assessing applicants' efficiency

The requirement of employee trustworthiness demands that honesty, integrity, loyalty, and general fitness receive consideration, even for nonsensitive positions. Experience shows that not all criminal conduct leads to prosecution; e.g., thieving employees are fired or allowed to resign, drug or alcohol abusers are placed in rehabilitation programs, etc. A great deal of information bearing on fitness is furnished by sources other than those charged with enforcing the law.

Congress should consider (the) need to define, in a manner acceptable to the courts, disloyal acts which should bar Federal employment

There is a need for definitive guidelines in the area of investigating and adjudicating information with loyalty connotations. We would welcome any definitions that could be provided by Congress or the Department of Justice.

Congress should consider the scope of investigation needed for the several levels of security clearances granted Federal employees

The scope of any personnel security investigation is directly related to position sensitivity and job requirements; it should therefore be set by the investigative and adjudicative community within the Executive Branch. A proposed Executive Order to replace 10450 provides for sensitivity classification of positions at the department or agency level, gives criteria to be applied in designating a position as sensitive, and allows the Civil Service Commission to prescribe scope.

Congress should consider whether there is a need in the legislation for provisions to aid CSC in gathering local law enforcement information; e.g., reimbursing local law enforcement agencies for supplying information, receiving assistance from Federal law enforcement agencies, or clarifying CSC's legal authority to have local arrest information

We would welcome assistance in obtaining information from local law enforcement agencies. We have found that local sources provide an appreciable amount of actionable information not recorded elsewhere. However, our access to such information has been reduced or restricted by overzealous application of related Federal guidelines, or by adoption of state or local restrictions on dissemination. As a minimum, state and local agencies should be made aware of CSC's legal authority to obtain such information. Any financial consideration provided to state or local agencies should be in the form of grants or other assistance; direct reimbursement would prove too costly.

RECOMMENDATIONS TO THE CHAIRMAN, CIVIL SERVICE COMMISSION

Recommendations to improve employing agencies' consistency in classifying positions

Establish criteria which will provide agencies clear instructions on how to classify positions into three categories based on whether the position duties would enable an occupant to have (1) a materially adverse effect on national security and/or a materially adverse effect on other national interests, (2) a materially adverse effect on agency operations, or (3) no materially adverse effect on agency or national interests. These classifications should then be used as the communication tool for designating the scope of the investigation needed, the responsibility for adjudication, and the need to disseminate investigative results

The term "materially adverse effect" appeared in the first proposed Executive Order to replace 10450 but was not included in the rewrite, the feeling being that it is vague, difficult to define, and would lead to confusion in classification and designation. The rewrite calls for two classification categories, sensitive and nonsensitive, with the following criteria to be applied in designating a position as sensitive:

(1) Access to information classified as Secret or Top Secret under Executive Order 11652;

(2) Duties involved in the conduct of foreign affairs;

(3) Approval of plans, policies or programs which affect the overall operations of a department, agency, or organizational component; that is, policy-making or policy-determining positions;

(4) Investigative duties, the issuance of personnel security clearances, or the making of personnel security determinations;

(5) Duties involved in approving the collection, grant, loan, payment or other use of property or funds of high value, or other duties demanding the highest degree of public trust and confidence;

(6) Duties involved in the enforcement of laws, or responsibilities for the protection of individuals or property;

(7) Duties, whether performed by Federal employees or contractors, involved in the design, operation or maintenance of Federal computer systems, or access to data contained in manual or automated files and records or Federal computer systems, when such data relates to national security, personal, proprietary or economically valuable information, or when the duties or data relate to distribution of funds, requisition of supplies or similar functions; or

(8) Duties involved in or access to areas which have a critical impact on the national security, economic well-being of the nation, or public health or safety.

Regardless of criteria, the placing of a position in a specific designation is a judgment call; the agency is in the best position to make it. The Civil Service Commission would be glad to provide assistance to the extent it is able.

Assign more people to the review of agency classifications to bring about consistent use of the categories and thus appropriate investigations

We agree that this part of our function needs to be strengthened, and we anticipate that our Security Appraisal staff will be increased. The proposed Executive Order would give CSC more authority in this area and would require

that agencies implement corrective action or modification prescribed by the Commission. This authority is not currently contained in Executive Order 10450.

Recommendations to insure that occupants of sensitive positions are properly investigated

Establish controls which insure that written inquiries are responded to and used for adjudication

Although we are now retaining all vouchers and using them in the adjudicative process, we cannot insure that all vouchers sent will produce response. We cannot require response from those reluctant to respond; nor can we spend the time and money to track down addressees who have relocated.

Establish controls which insure that classifiable fingerprints for the FBI check are obtained

We have requested improvement from agencies, we are currently offering training in this area, and we anticipate that a 95 percent rate of proficiency will be met. We will monitor agency performance to identify those having problems, however, it must be realized that many agency people who take prints are less-than-expert in the field. We do not feel that refusing to process cases until classifiable prints are obtained is a viable alternative, since several agencies grant interim clearance on the basis of a name check only.

Establish clear criteria for determining when cases should be further investigated to obtain complete and accurate information and to ascertain if a pattern of misconduct is continuing or if rehabilitation has been accomplished

We have developed criteria to be used in making a determination as to whether additional investigation should be accomplished; they are currently being evaluated and we anticipate they will be issued in early April.

Establish controls to prevent arbitrary reductions in scope of investigations

We feel that the consolidation of the NAC/NACI operation and the application of the criteria for initiating additional investigation will insure that scope requirements are met.

Recommendations to insure that loyalty investigations protect the interests of the Government and the rights of individuals

Order loyalty investigations only when the type of information being pursued will be disqualifying if verified

We agree that there is a need for guidance in this area. The proposed Executive Order would require the Department of Justice to issue guidelines for the referral of cases to the Federal Bureau of Investigation and establish criteria for the use of the information developed by these investigations in the adjudication of such cases.

Obtain authorization from the Congress for the files on alleged subversive and radical organizations or destroy the files

We have decided to dispose of all our organization files.

Recommendations to insure that the investigative information collected and disseminated is limited to only that which is needed

Assume complete responsibility for adjudicating past conduct in making suitability determinations for occupants of nonsensitive positions and retain the investigative results

The Commission has approved delegating to employing agencies the responsibility for evaluating suitability information in all appointee cases. At present, agencies adjudicate information in critical-sensitive cases, and share jurisdiction with CSC in noncritical-sensitive and nonsensitive cases. Given the approved delegation, the question remains as to what information will be disseminated to agencies; this will be addressed following the next item.

Assign adjudication responsibility for all sensitive positions to employing agencies

We endorse this recommendation and will issue an implementing directive should the proposed order be approved with its sensitive/nonsensitive classifica-

tion provision. As indicated above, agencies now have adjudicative authority, by delegation from the Commission, in critical-sensitive positions.

Establish criteria on the completeness, accuracy, and age of information which can be used by CSC for adjudication or be disseminated to an employing agency for its adjudication. Also, restrict the collection of information to that which can be used

Our investigators have received instructions on the collection and reporting of information bearing on exercise of individual rights. We are reviewing files established before the Privacy Act prior to release to insure that First Amendment information is not disseminated. In addition, we are developing guidelines to be used in making a determination as to what information will be used by the CSC or released to agencies.

When needed to determine the qualifications of potential appointees, direct employing agencies to make appropriate inquiries of prior employment and educational sources

Agencies already have this authority in the case of applicants, and are instructed to refer all investigative information to the Commission when requesting an NACI. In the case of appointees, qualifications have already been determined; the making of inquiries is a required part of suitability screening. Also to be considered is the cost factor; the cost difference in processing written inquiries from thousands of agency installations and from one central location (Boyers, Pennsylvania) would be enormous.

In summary, we agree with the principles contained in the GAO study. We hope that the recommendations contained therein will provide the impetus for the establishment of a strong, consistent, and equitable personnel investigations program.

I will be happy to supply any additional information you desire.

Sincerely yours,

ALAN K. CAMPBELL,
Chairman.

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., March 13, 1978.

HON. STROM THURMOND,
Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR SENATOR THURMOND: The letter of March 1, 1978, from you and Senator Eastland, requests that we postpone taking any action with respect to the index to the Security Research Files and the Files themselves until Congress has had an opportunity to consider the matter and make a finding.

The dismantling and destruction of the index was approved by the Commission in September, 1975, just prior to the effective date of the Privacy Act of 1974. While the index has not been used subsequent to September 27, 1975, it could not be destroyed because of the moratorium on the destruction of records imposed by Senate Resolution 21, of January 27, 1975. This moratorium was lifted on December 21, 1977, and we were preparing to dispose of the index as well as the source material.

In our judgment the index does not meet the standards of relevancy, accuracy, and timeliness required by the Privacy Act of 1974, and its continued use would violate Section (e)(7) which provides that an agency shall maintain no record describing how an individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record pertains, or unless pertinent to and within the scope of an authorized law enforcement activity.

The attached decision of the court in *Gang* v. *Civil Service Commission* represents the consequences that attach both to the maintenance of untimely information and information pertaining to the exercise of First Amendment rights. Nevertheless, we will not destroy or dispose of the index or source material pending further discussion with your staff.

I would also hope that our respective staffs could discuss the broader issues set forth in your letter to assure a proper understanding of what we interpret as the impact of the Privacy Act of 1974 on the Federal Employee Loyalty/Security Program.

To arrange for further discussion please have someone on your staff contact Robert J. Drummond, Jr., telephone 632-6181.

Sincerely yours,

ALAN K. CAMPBELL,
Chairman.

Enclosure.

Civil Action No. 76-1233

(Filed May 10, 1977)

ROBERT A. GANG, PLAINTIFF,

v.

UNITED STATES CIVIL SERVICE COMMISSION, ET AL., DEFENDANTS.

Memorandum Opinion and Order

This matter comes before the court on the parties' cross motions for summary judgment.[1] Plaintiff brings this action under the Privacy Act of 1974, 5 U.S.C. § 552a, seeking damages and ancillary injunctive relief for defendants' alleged violations of several provisions of that Act. The circumstances surrounding the institution of this suit came to a head when plaintiff unsuccessfully applied for employment with the Library of Congress in 1975.

Plaintiff was employed by the federal government from 1939 to 1947. His Civil Service Commission (CSC) investigative file, begun in August 1942, contained information concerning plaintiff's alleged "leftist" political views, his membership in left-wing organizations, his conscientious objector draft status, his religion, his medical condition, and his family history. Between 1947 and 1975, plaintiff unsuccessfully applied for employment with the Department of the Interior, the Housing and Home Finance Agency, and the Environmental Protection Agency. In July 1975 plaintiff applied for a position with the Library of Congress and was interviewed by Mr. Eugene Powell. Plaintiff's CSC investigative file was made available to the Library of Congress on October 21, 1975, 24 days after the effective date of the Privacy Act. Although Mr. Powell did not see the investigative file, he was given a summary. Plaintiff ultimately was not hired by the Library. He requested access to the CSC investigatory file under the Privacy Act in November 1975, and such access was granted in December 1975; plaintiff thereupon petitioned to have his file expunged, and the file was expunged in its entirety in April 1976. Plaintiff filed the instant lawsuit April 16, 1976.

I. VIOLATION OF PRIVACY ACT

Plaintiff contends that defendants violated the provisions of the Privacy Act in several respects. Specifically, plaintiff charges defendants with violating sections (e)(6), (e)(7), (e)(5), (e)(1), and (g)(1)(C) of the Act. 5 U.S.C. §§ 552a (e)(6), (e)(7), (e)(5), (e)(1), (g)(1)(C). Each of these claims shall be examined in turn.

Section (e)(6).—Section (e)(6) of the Privacy Act provides: "Each agency that maintains a system of records shall—prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes."

Plaintiff argues that the CSC made no efforts whatever, much less reasonable efforts, to assure that the materials in the investigative file were accurate, complete, timely, and relevant. At a minimum, plaintiff suggests, the CSC should have reviewed the file before making it available to the Library of Congress, deleting the obviously untimely and irrelevant information contained therein. Plaintiff argues that 30 year-old material contained in the file was patently untimely and that the information concerning political associations, draft status, and religion was patently irrelevant. Finally, plaintiff suggests that the later

[1] Plaintiff seeks partial summary judgment on the liability issue—whether defendants violated the Privacy Act and acted in a willful or intentional manner—while defendants seek summary judgment on all issues and a dismissal of defendants Drummond, Hampton, Sheldon, and Andolsek as improper parties to this action.

CSC determination to expunge the entire file demonstrates the untimeliness and irrelevance of the material contained in the file.

Defendants first dispute that the Library of Congress is a "person other than an agency" within the meaning of section (e)(6). In support of this theory, defendants assert that the Library functions in the same manner as an agency and that Congress intends that the Library be considered an agency. Release of the CSC investigative file to the Library was sanctioned by a longstanding agreement between the CSC and the Library; in fact, defendants state that Congress has budgeted funds to reimburse the CSC for the Library's use of CSC investigative files. It is clear to the court, however, that the Library of Congress is not an agency within the meaning of section (e)(6) of the Privacy Act.[2] The Library is an instrumentality of the legislative branch and therefore cannot qualify as an "executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government." 5 U.S.C. § 552(e) (emphasis supplied). Defendants cite no case, and the court finds none, finding that the Library of Congress qualifies as an agency for purposes of either the Privacy Act or the Freedom of Information Act. The mere fact that the CSC and the Library may have exchanged information in the past is not relevant to a determination under section (e)(6); that provision does not prohibit the dissemination of information but rather merely requires that the distributing agency make efforts to assure the information's accuracy, completeness, timeliness, and relevance.

Defendants also contend that they complied with the standards of section (e)(6) in releasing the information at issue. They argue that the information released was in fact accurate, complete, timely, and relevant. The file was maintained by defendants pursuant to Executive Order 10450 and disseminated to the Library pursuant to the provisions of the Act governing the "routine use" of information.[3] Defendants further suggest that the information was accurate and complete because it contained a full record of plaintiff's dealings with the federal government concerning his employment between 1942 and 1966, including a 1966 CSC determination that plaintiff was suitable for federal employment. Relevance is shown, in defendants' mind, by the fact that the investigative file had its origin in a routine security check and subsequent suitability inquiries. Defendants assert timeliness on the basis of the CSC's rational policy of a 20 year retention time in effect at the time of the dissemination of the information to the Library of Congress.[4] Although the court has serious doubts that the information disseminated to the Library of Congress was either timely—most of the information was 30 years old—or relevant, it need not determine for purposes of this claim of violation whether the information transmitted was accurate, complete, timely, and relevant. Even assuming that these four criteria of dissemination under section (e)(6) were in fact met, that result in this case would have occurred by accident rather than by the CSC's "reasonable efforts to assure" that the information so qualified. Between September 27, 1975, the effective date of the Privacy Act, and October 21, 1975, the date of the dissemination of plaintiff's file to the Library of Congress, the CSC concededly took no steps whatever to determine whether plaintiff's files were inaccurate, untimely, irrelevant, or incomplete, nor did it review these files under these standards prior to dissemination to others. Had the CSC reviewed plaintiff's file prior to dissemination to the Library of Congress, it well could have concluded at that time, as it in fact concluded in April 1976, that it should remove most or all of the material from plaintiff's file. Thus the CSC took no efforts to assure accuracy, completeness, timeliness, and relevance prior to dissemination rather than the required "reasonable efforts," and it thereby violated section (e)(6) of the Act. Defendants appear to suggest that they made the necessary reasonable efforts at the time the information was placed into plaintiff's file. While the

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[2] The Privacy Act adopts the definition of "agency" found in the Freedom of Information Act, 5 U.S.C. § 552a(a)(1); *see id.* § 552(e).

[3] *See* 5 U.S.C. § 552a(a)(7). Even if a routine use and disclosable without plaintiff's permission, the CSC nevertheless was obligated to comply with section (e) of the Act, including section (e)(6).

[4] Plaintiff's file was retained because one entry, a 1966 CSC determination of suitability for employment, was less than 20 years old. The CSC instituted the 20 year retention policy soon before the effective date of the Privacy Act, amending a previous 30 year policy. It is not clear whether the CSC made the determination to keep plaintiff's file under the new policy before dissemination to the Library of Congress. Defendants admit, however, that they made no actual review of the file prior to dissemination.

court does not suggest that section (e)(6) in all cases requires a separate review of a file immediately prior to dissemination so long as some indicia of reasonable efforts to assure accuracy, completeness, timeliness, and relevance exist, in the circumstances of this case defendants point to no individualized efforts to clear out what certainly appears to have been untimely and irrelevant information prior to dissemination.

Section (e)(7).—Plaintiff also contends that defendants violated section (e)(7) of the Privacy Act, which provides: "Each agency that maintains a system of records shall—maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of authorized law enforcement activity."

Plaintiff argues that the materials in his investigative file concerning his political views, membership in political organizations, his views concerning war, his religion, and his associations all describe how plaintiff exercised his first amendment rights. Since defendants admit that the records were maintained after the effective date of the Privacy Act, plaintiff suggests that the court focus only on the exceptions to section (e)(7). He argues that he did not authorize maintenance of this information and that the information is not kept pursuant to statute or any CSC law enforcement function.

Defendants, while appearing to concede that some information in plaintiff's file describes how he exercised his first amendment rights, argue nevertheless that the records were maintained pursuant to statute and within the scope of an authorized law enforcement activity. The statute in question is 5 U.S.C. § 7311, which prohibits an individual from holding a position with the federal government if he advocates—or is a member of an organization that he knows advocates—the overthrow of the government, participates in a strike against the government, or is a member of an organization that he knows asserts the right to strike against the government. Defendants fail to explain convincingly how much of the information contained in plaintiff's file even arguably implicates this statute. The statute may be read together with section (e)(7), to permit maintenance of files relating to membership in groups advocating the overthrow of the government, but it cannot fairly be read to permit wholesale maintenance of all materials relating to political beliefs, associations, and religion.[5]

Nor is it clear to the court that the information may be maintained as within the scope of authorized "law enforcement activity." Defendants assert that information compiled for the purpose of determining plaintiff's suitability for federal employment fall within the intended broad meaning of "law enforcement activity." *See* 120 Cong. Rec. H 10892 (daily ed. Nov. 20, 1974) (remarks of Rep. Ichord). The legislative history, however, contains some evidence of a narrower intended definition, limited to criminal matters. *See* S. Rep. No. 1183, 93d Cong., 2d Sess. 23 (1974). For purposes of exemption 7 to the Freedom of Information Act, 5 U.S.C. § 552(b)(7), it is clear that the phrase "law enforcement purposes" does not include material that "is acquired essentially as a matter of routine." *Center for National Policy Review* v. *Weinberger*, 502 F.2d 370, 373 (D.C. Cir. 1974). The District of Columbia Circuit distinguishes between files concerning government oversight of its employees' performance of duties and investigations focusing directly on alleged illegal acts in determining the law enforcement issue under exemption 7. *Rural Housing Alliance* v. *Department of Agriculture*, 498 F.2d 73, 81 (D.C. Cir. 1974). Since defendants concede that the information in plaintiff's file was compiled originally pursuant to a routine security investigation, it appears by analogy to the FOIA cases that the material in the investigative file cannot qualify as within the scope of an authorized law enforcement activity. Defendants certainly offer no explanation why these outdated materials could have been pertinent to an authorized law enforcement activity in 1975.

Sections (e)(5), (e)(1) and (g)(1)(C).—Plaintiff also alleges violations of section (e)(5), (e)(1), and (g)(1)(C) of the Act. The court quickly can dispose of the section (g)(1)(C) question, as that section is merely a jurisdictional provision permitting a district court to exercise jurisdiction in certain circumstances. The standard set in section (g)(1)(C) is similar to the requirements of section (e)(5) and need not be separately considered here.

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[5] Defendants also point to 5 U.S.C. § 3301, which authorizes the President to ascertain the fitness of federal applicants for employment as to, *inter alia*, "character." This statute cannot fairly be read expressly to authorize maintenance of the records at issue here.

Section (e)(5) imposes the obligation to maintain records used to make any determination about an individual with such "accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination." Defendants contend that the records at issue are not "used by the agency in making any determination" about plaintiff and therefore do not qualify as requiring an (e)(5) determination. The last CSC determination concerning plaintiff occurred in 1966. Since the CSC took no action and made no determination with respect to plaintiff subsequent to the effective date of the Act, the requirements of section (e)(5) have not been triggered.

Section (e)(1) requires an agency to maintain in its records "only such information about an individual as is relevant and necessary to accomplish a purpose" of the agency. Although the wording of this section suggests that a court should defer to some extent to the agency's determination of relevance and necessity, so long as the intended purpose of maintaining the records is mandated by statute or executive order, a court hardly is powerless to review carefully the agency's action. Plaintiff argues that his file contained material irrelevant and unnecessary to a proper CSC purpose, and the court—as indicated above—believes this argument probably has some merit. A conclusion that section (e)(1) has been violated, however, is not inevitable. In any case, having found a violation of sections (e)(6) and (e)(7), the court need not decide the (e)(1) issue in order to determine defendants' liability.

II. INTENTIONAL ACTION

Plaintiff must also show that defendants acted in an "intentional or willful" manner in order to establish their liability. 5 U.S.C. § 552a(g)(4). Since defendants admit that their actions were intentional, plaintiff has made a sufficient showing and this is not an issue in the present case.

III. ADVERSE EFFECT

Plaintiff finally must show that the failure of defendants to comply with the Act caused an "adverse effect" on him. 5 U.S.C. § 552a(g)(1)(D). Plaintiff asserts that disputed issues of material fact concerning his rejection for employment by the Library of Congress make summary judgment inappropriate on this issue. Plaintiff's theory is that Mr. Powell's decision not to hire plaintiff was affected by Powell's review of the summary of the investigative file. Although defendants cite Mr. Powell as stating that he did not consider the information current or important, the court concludes that there indeed exist genuine issues of material fact making the entry of summary judgment inappropriate at this time.

IV. DISMISSAL OF DEFENDANTS OTHER THAN THE AGENCY

Defendants Hampton, Sheldon, Andolsek, and Drummond move to be dismissed from this action on the ground that the agency is the only proper defendant under the Privacy Act. The Act provides that under certain conditions an "individual may bring a civil action against the agency." 5 U.S.C. § 552a (g)(1). Plaintiff agrees to dismissal of Drummond but desires to keep the other three individual defendants in the suit for purposes of his claim for ancillary injunctive relief. It appears to the court that the agency is the only proper defendant in this case. *Mason* v. *Hoffman*, Civ. No. 76–182–A (E.D. Va. Mar. 30, 1977).

Accordingly, it is, by this court, this 10th day of May, 1977,

Ordered that plaintiff's motion for partial summary judgment be, and the same hereby is, granted; and it is further

Ordered that defendants' motion to dismiss be, and the same hereby is, denied except that defendants Hampton, Sheldon, Andolsek, and Drummond are hereby dismissed as party defendants; and it is further

Ordered that defendants' motion for summary judgment be, and the same hereby is, denied; and it is further

Ordered that the parties appear before this court for a further status call in this action on May 26, 1977 at 9:30 a.m.

EXECUTIVE ORDER 10450

[*Ed. Note:* This Order established the Eisenhower security program. The print following incorporates amendments made by Executive Orders 10491, 10531, 10548, 10550, and 11785.]

Whereas the interests of the national security require that all persons privileged to be employed in the departments and agencies of the Government, shall be reliable, trustworthy, of good conduct and character, and of complete and unswerving loyalty to the United States; and

Whereas the American tradition that all persons should receive fair, impartial, and equitable treatment at the hands of the Government requires that all persons seeking the privilege of employment or privileged to be employed in the departments and agencies of the Government be adjudged by mutually consistent and no less than minimum standards and procedures among the departments and agencies governing the employment and retention in employment of persons in the Federal service:

Now, therefore, by virtue of the authority vested in me by the Constitution and statutes of the United States, including section 1753 of the Revised Statutes of the United States (5 USC 631); the Civil Service Act of 1883 (22 Stat. 403; 5 USC 632, et seq.); section 9A of the act of August 2, 1939, 53 Stat. 1148 (5 USC 118j); and the act of August 26, 1950, 64 Stat. 476 (5 USC 22–1, et seq.), and as President of the United States, and deeming such action necessary in the best interests of the national security, it is hereby ordered as follows:

Section 1.—In addition to the departments and agencies specified in the said act of August 26, 1950, and Executive Order No. 10237 of April 26, 1951, the provisions of that act shall apply to all other departments and agencies of the Government.

Section 2.—The head of each department and agency of the Government shall be responsible for establishing and maintaining within his department or agency an effective program to insure that the employment and retention in employment of any civilian officer or employee within the department or agency is clearly consistent with the interests of the national security.

Section 3.—(a) The appointment of each civilian officer or employee in any department or agency of the Government shall be made subject to investigation. The scope of the investigation shall be determined in the first instance according to the degree of adverse effect the occupant of the position sought to be filled could bring about, by virtue of the nature of the position, on the national security, but in no event shall the investigation include less than a national agency check (including a check of the fingerprint files of the Federal Bureau of Investigation), and written inquiries to appropriate local law-enforcement agencies, former employers and supervisors, references, and schools attended by the person under investigation: *Provided*, that upon request of the head of the department or agency concerned, the Civil Service Commission may, in its discretion, authorize such less investigation as may meet the requirements of the national security with respect to per-diem, intermittent, temporary, or seasonal employees, or aliens employed outside the United States. Should there develop at any stage of investigation information indicating that the employment of any such person may not be clearly consistent with the interests of the national security, there shall be conducted with respect to such person a full field investigation, or such less investigation as shall be sufficient to enable the head of the department or agency concerned to determine whether retention of such person is clearly consistent with the interests of the national security.

(b) The head of any department or agency shall designate, or cause to be designated, any position within his department or agency the occupant of which could bring about, by virtue of the nature of the position, a material adverse effect on the national security as a sensitive position. Any position so designated shall be filled or occupied only by a person with respect to whom a full field investigation has been conducted: *Provided*, that a person occupying a sensitive position at the time it is designated as such may continue to occupy such position pending the completion of a full field investigation, subject to the other provisions of this order: *And provided further*, that in case of emergency a sensitive position may be filled for a limited period by a person with respect to whom a full field preappointment investigation has not been completed if the head of the department or agency concerned finds that such action is necessary in the national interest, which finding shall be made a part of the records of such department or agency.

Section 4.—The head of each department and agency shall review, or cause to be reviewed, the cases of all civilian officers and employees with respect to whom there has been conducted a full field investigation under Executive Order No. 9835 of March 21, 1947, and, after such further investigation as may be appropriate, shall re-adjudicate, or cause to be re-adjudicated, in accordance with the said act of August 26, 1950, such as those cases as have not been adjudicated under a security standard commensurate with that established under this order.

Section 5.—Whenever there is developed or received by any department or agency information indicating that the retention in employment of any officer or employee of the Government may not be clearly consistent with the interests of the national security, such information shall be forwarded to the head of the employing department or agency or his representative who, after such investigation as may be appropriate, shall review, or cause to be reviewed, and, where necessary, re-adjudicate, or cause to be re-adjudicated, in accordance with the said act of August 26, 1950, the case of such officer or employee.

Section 6.—Should there develop at any stage of investigation information indicating that the employment of any officer or employee of the Government may not be clearly consistent with the interests of the national security, the head of the department or agency concerned or his representative shall immediately suspend the employment of the person involved if he deems such suspension necessary in the interests of the national security and, following such investigation and review as he deems necessary, the head of the department or agency concerned shall terminate the employment of such suspended officer or employee whenever he shall determine such termination necessary or advisable in the interests of the national security, in accordance with the said act of August 26, 1950.

Section 7.—Any person whose employment is suspended or terminated under the authority granted to heads of departments and agencies by or in accordance with the said act of August 26, 1950, or pursuant to the said Executive Order No. 9835 or any other security or loyalty program relating to officers or employees of the Government, shall not be reinstated or restored to duty or reemployed in the same department or agency and shall not be reemployed in any other department or agency, unless the head of the department or agency concerned finds that such reinstatement, restoration, or reemployment is clearly consistent with the interests of the national security, which finding shall be made a part of the records of such department or agency: *Provided*, that no person whose employment has been terminated under such authority thereafter may be employed by any other department or agency except after a determination by the Civil Service Commisssion that such person is eligible for such employment.

Section 8.—(a) The investigations conducted pursuant to this order shall be designed to develop information as to whether the employment or retention in employment in the Federal service of the person being investigated is clearly consistent with the interests of the national security. Such information shall relate, but shall not be limited, to the following:

(1) Depending on the relation of the Government employment to the national security: (i) Any behavior, activities, or associations which tend to show that the individual is not reliable or trustworthy; (ii) any deliberate misrepresentations, falsifications, or omissions of material facts; (iii) any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug addition, or sexual perversion; (iv) any illness, including any mental condition, of a nature which in the opinion of competent medical authority may cause significant defect in the judgment or reliability of the employee, with due regard to the transient or continuing effect of the illness and the medical findings in such case; and (v) any facts which furnish reason to believe that the individual may be subjected to coercion, influence, or pressure which may cause him to act contrary to the best interests of the national security.

(2) Commission of any act of sabotage, espionage, treason, or sedition, or attempts thereat or preparation therefor, or conspiring with, or aiding or abetting, another to commit or attempt to commit any act of sabotage, espionage, treason or sedition.

(3) Establishing or continuing a sympathetic association with a saboteur, spy, traitor, seditionist, anarchist, or revolutionist, or with an espionage or

other secret agent or representative of a foreign nation, or any representative of a foreign nation whose interests may be inimical to the interests of the United States, or with any person who advocates the use of force or violence to overthrow the goverment of the United States or the alteration of the form of government of the United States by unconstitutional means.

(4) Advocacy of use of force or violence to overthrow the government of the United States, or of the alteration of the form of government of the United States by unconstitutional means.

(5) Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in, any foreign or domestic organization, association, movement, group, or combination of persons (hereinafter referred to as organizations) which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or of any State, or which seeks to overthrow the Government of the United States or any State or subdivision thereof by unlawful means. (As amended by E.O. 11785, dated June 4, 1974, 39 Fed. Reg. 110.)

(6) Intentional, unauthorized disclosure to any person of security information, or of other information disclosure of which is prohibited by law, or willful violation or disregard of security regulations.

(7) Performing or attempting to perform his duties, or otherwise acting, so as to serve the interests of another government in preference to the interests of the United States.

(8) Refusal by the individual, upon the ground of constitutional privilege against self-incrimination, to testify before a congressional committee regarding charges of his alleged disloyalty or other misconduct".

(b) The investigation of persons entering or employed in the competitive service shall primarily be the responsibility of the Civil Service Commission, except in cases in which the head of a department or agency assumes that responsibility pursuant to law or by agreement with the Commission. The Commission shall furnish a full investigative report to the department or agency concerned.

(c) The investigation of persons (including consultants, however employed), entering employment of, or employed by, the Government other than in the competitive service shall primarily be the responsibility of the employing department or agency. Departments and agencies without investigative facilities may use the investigative facilities of the Civil Service Commission, and other departments and agencies may use such facilities under agreement with the Commission.

(d) There shall be referred promptly to the Federal Bureau of Investigation all investigations being conducted by any other agencies which develop information indicating that an individual may have been subjected to coercion, influence, or pressure to act contrary to the interests of the national security, or information relating to any of the matters described in subdivisions (2) through (8) of subsection (a) of this section. In cases so referred to it, the Federal Bureau of Investigation shall make a full field investigation.

Section 9.—(a) There shall be established and maintained in the Civil Service Commission a security-investigations index covering all persons as to whom security investigations have been conducted by any department or agency of the Government under this order. The central index established and maintained by the Commission under Executive Order No. 9835 of March 21, 1947, shall be made a part of the security-investigations index. The security-investigations index shall contain the name of each person investigated, adequate identifying information concerning each such person, and a reference to each department and agency which has conducted an investigation concerning the person involved or has suspended or terminated the employment of such person under the authority granted to heads of departments and agencies by or in accordance with the said act of August 26, 1950.

(b) The heads of all departments and agencies shall furnish promptly to the Civil Service Commission information appropriate for the establishment and maintenance of the security-investigations index.

(c) The reports and other investigative material and information developed by investigations conducted pursuant to any statute, order, or program described in section 7 of this order shall remain the property of the investigative agencies conducting the investigations, but may, subject to considerations of the national

security, be retained by the department or agency concerned. Such reports and other investigative material and information shall be maintained in confidence, and no access shall be given thereto except, with the consent of the investigative agency concerned, to other departments and agencies conducting security programs under the authority granted by or in accordance with the said act of August 26, 1950, as may be required for the efficient conduct of Government business.

Section 10.—Nothing in this order shall be construed as eliminating or modifying in any way the requirement for any investigation or any determination as to security which may be required by law.

Section 11.—On and after the effective date of this order the Loyalty Review Board established by Executive Order No. 9835 of March 21, 1947, shall not accept agency findings for review, upon appeal or otherwise. Appeals pending before the Loyalty Review Board on such date shall be heard to final determination in accordance with the provisions of the said Executive Order No. 9835, as amended. Agency determinations favorable to the officer or employee concerned pending before the Loyalty Review Board on such date shall be acted upon by such Board, and whenever the Board is not in agreement with such favorable determination the case shall be remanded to the department or agency concerned for determination in accordance with the standards and procedures established pursuant to this order. Cases pending before the regional boards of the Civil Service Commission on which hearings have not been initiated on such date shall be referred to the department or agency concerned. Cases being heard by regional loyalty boards on such date shall be heard to conclusion, and the determination of the board shall be forwarded to the head of the department or agency concerned: *Provided*, that if no specific department or agency is involved, the case shall be dismissed without prejudice to the applicant. Investigations pending in the Federal Bureau of Investigation or the Civil Service Commission on such date shall be completed, and the reports thereon shall be made to the appropriate department or agency.

Section 12.—Executive Order No. 9835 of March 21, 1947, as amended is hereby revoked.

Section 13.—The Attorney General is requested to render to the heads of departments and agencies such advice as may be requisite to enable them to establish and maintain an appropriate employee security program.

Section 14.—(a) The Civil Service Commission, with the continuing advice and collaboration of representatives of such departments and agencies as the National Security Council may designate, shall make a continuing study of the manner in which this order is being implemented by the departments and agencies of the Government for the purpose of determining:

(1) Deficiencies in the department and agency security programs established under this order which are inconsistent with the interests of, or directly or indirectly weaken, the national security.

(2) Tendencies in such programs to deny to individual employees fair, impartial, and equitable treatment at the hands of the Government, or rights under the Constitution and laws of the United States or this order.

Information affecting any department or agency developed or received during the course of such continuing study shall be furnished immediately to the head of the department or agency concerned. The Civil Service Commission shall report to the National Security Council, at least semiannually, on the results of such study, shall recommend means to correct any such deficiencies or tendencies, and shall inform the National Security Council immediately of any such deficiency which is deemed to be of major importance.

(b) All departments and agencies of the Government are directed to cooperate with the Civil Service Commission to facilitate the accomplishment of the responsibilities assigned to it by subsection (a) of this section.

(c) To assist the Civil Service Commission in discharging its responsibilities under this order, the head of each department and agency shall, as soon as possible and in no event later than ninety days after receipt of the final investigative report on a civilian officer or employee subject to a full field investigation under the provisions of this order, advise the Commission as to the action taken with respect to such officer or employee. The information furnished by the heads of departments and agencies pursuant to this section shall be included in the reports which the Civil Service Commission is required to submit to the National Security Council in accordance with subsection (a) of this section. Such reports

shall set forth any deficiencies on the part of the heads of departments and agencies in taking timely action under this order, and shall mention specifically any instances of noncompliance with this subsection.

Section 15.—This order shall become effective thirty days after the date hereof.

DWIGHT D. EISENHOWER.

THE WHITE HOUSE, *April 27, 1953.*

EXECUTIVE ORDER 11785

Amending Executive Order No. 10450, as Amended, Relating to Security Requirements for Government Employment, and for Other Purposes (See page 15:57)

By virtue of the authority vested in me by the Constitution and statutes of the United States, including 5 U.S.C. 1101 *et seq.*, 3301, 3571, 7301, 7313, 7501(c), 7512, 7532, and 7533; and as President of the United States, and finding such action necessary in the best interests of national security, it is hereby ordered as follows:

Section 1.—Section 12 of Executive Order No. 10450 [1] of April 27, 1953, as amended, is revised to read in its entirety as follows: "Sec. 12. Executive Order No. 9835 of March 21, 1947, as amended, is hereby revoked."

Section 2.—Neither the Attorney General, nor the Subversive Activities Control Board, nor any other agency shall designate organizations pursuant to section 12 of Executive Order No. 10450, as amended, nor circulate nor publish a list of organizations previously so designated. The list of organizations previously designated is hereby abolished and shall not be used for any purpose.

Section 3.—Subparagraph (5) of paragraph (a) of section 8 of Executive Order No. 10450, as amended, is revised to read as follows: "Knowing membership with the specific intent of furthering the aims of, or adherence to and active participation in, any foreign or domestic organization, association, movement, group, or combination of persons (hereinafter referred to as organizations) which unlawfully advocates or practices the commission of acts of force or violence to prevent others from exercising their rights under the Constitution or laws of the United States or of any State, or which seeks to overthrow the Government of the United States or any State or subdivision thereof by unlawful means."

Section 4.—Executive Order No. 11605 of July 2, 1971, is revoked.

/s/ RICHARD NIXON.

THE WHITE HOUSE. *June 4, 1974.*

INDEX

[NOTE.—The Senate Criminal Laws and Procedures Subcommittee attaches no significance to the mere fact of the appearance of the name of an individual or organization in this index.]

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